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THE SOLICITORS' JOURNAL.

LONDON, DECEMBER 1, 1860.

CURRENT TOPICS.

The unexpected death of Mr. Coulson, Q.C., will enable the law authorities to reconsider the very important question of Parliamentary drawing—or, in other words, the preparation of Bills for the different Government departments—in sufficient time to devise some suitable plan before the meeting of Parliament. We want no more committees, general or select, of either House of Parliament; nor does any one (except, perhaps, some expectant commissioner) desire to see anything like a revivification of the happily defunct statute law commission. All the information that can possibly be desired on the subject generally is contained in numerous blue books, some of them of recent date. Indeed, one of them alone, namely the minutes of the evidence taken before the Select Committee on the Statute Law Commission, three or four years ago, contains abundant information not only on the evils and the peculiar methods of our Parliamentary law-making, but also some admirable and practical suggestions for the introduction of an improved system. It has been proposed that Parliament should appoint an officer, or a board, whose duty it should be either to prepare or revise, and to report upon all Bills, and to watch them during their progress through the two houses. Another suggestion is that such functionaries should not be appointed or officially recognised by Parliament, but that they should be officers either of the Lord Chancellor or the Attorney General; or else that one such officer should be attached to each of the principal departments of government. Any scheme which would interfere with the free action of Parliament, would, of course, require parliamentary sanction, and will necessarily be attended with considerable difficulty. But no such obstacles would be in the way of improvements in the mere preparation of Government Bills. The duties of Mr. Coulson were extremely ill defined, and of a very multifarious character. It appears to have fallen to his lot, in theory at least, to draw all the Bills originating in the Home Department, the greater part of those belonging to the Colonial and Foreign departments, and a considerable number of the Treasury Bills. He was, moreover, liable to be called upon to draw or revise bills for other departments, especially where there was no standing legal staff, as, for instance, the Board of Control; and he had to frame the annual report on expiring laws, which is properly the business of a committee of the House of Commons. It requires little reflection to be convinced that Mr. Coulson's task was too great to be satisfactorily accomplished by any human being; and therefore nobody blamed him for what was so completely beyond his power, namely, the frequent obscurity, uncertainty, and verbosity of the language of our statutes, the general absence of logical or convenient arrangement of their subject matter, the unintentional repeal and re-enactment of former Acts, the forgetfulness of the differences of forms of procedure in England and the sister countries, and the many other miserable characteristics of our modern English legislation. Without waiting for the realisation of any such grand scheme as the appointment of a parliamentary board or great functionary, the Lord Chancellor and the Attorney-General no doubt have it in their power to reorganise the system of Parliamentary drawing, so as to ensure to every important department of State the careful preparation of Government Bills affecting such department, and their skilful revision in their passage through both Houses of Parliament. The £2,000 a-year paid to Mr. Coulson would not nearly be sufficient to accomplish this most desirable object; but the whole sum required would be trifling compared with the great advantages that would be gained from the carrying out of such a scheme as we have proposed.

A correspondence has taken place between Mr. Huddleston, Q.C., and Mr. Cookson, the president of the Incorporated Law Society, in reference to certain statements made by the former upon the trial at Worcester of a case for breach of promise of marriage, to the effect that Mr. Clutterbuck, the plaintiff's attorney, had got up the action for his own profit, and that he had on a previous occasion extorted the sum of £20 from another defendant at the suit of the same plaintiff, the action not having gone further, as Mr. Huddleston stated, than the delivery of the writ and declaration. It appears that no evidence whatever was attempted to be offered in support of this aspersion upon the character of Mr. Clutterbuck; and of course he had no opportunity allowed him of refuting the calumny. Mr. Clutterbuck, however, properly regarding the statements made as injurious to his personal and professional character, demanded an explanation of Mr. Huddleston, which was declined, whereupon Mr. Clutterbuck submitted the matter to the Incorporated Law Society, and placed in the hands of that body a vindication of his character. It appears from this document that Mr. Huddleston's statements were incorrect in some very material particulars. In the first place, instead of the costs in the former action amounting to twenty pounds, it appears that they amounted only to £12 12s. 2d.; secondly, that instead of nothing more having been done than the delivery of the writ and declaration, the action in fact had proceeded to issue; and that notice of trial had been given, subpœnas issued, and the jury panel obtained. Mr. Clutterbuck, moreover, states that he had actually prepared briefs, which were ready to be delivered to counsel, when the action was compromised.

These important facts having been embodied in a memorial to the Incorporated Law Society, which was forwarded to Messrs. Rickards & Walker, an eminent and highly respectable firm, who acted as the town agents of Mr. Clutterbuck, Mr. Cookson, wrote to Mr. Huddleston the following letter:—

"Incorporated Law Society, Sept. 12.

"Sir—The Council of the Incorporated Law Society have received from Mr. Thomas Clutterbuck, of Worcester, attorney-at-law, through his London agents, Messrs. Rickards & Walker, who are members of the society, a memorial addressed to the council praying that, for the vindication of his character, they will inquire into the facts connected with a statement which he alleges was made by you in a cause of *Davis* v. *Bomford*, tried at the Worcestershire assizes on the 16th and 17th July last, to the effect that Mr. Clutterbuck, in an action brought by the same plaintiff against a person named Skinner, had exacted from Skinner the sum of £20 for his costs in the action simply for writ and declaration.

"The Council infer from the statement made to them that no evidence was offered in support of the charge, and that Mr. Clutterbuck had no opportunity of disproving it at the time, and that the charge was not in issue in the cause.

"The Council desire me to inform you of the statement made by Mr. Clutterbuck, and to draw your attention to the letter of the defendant Skinner, and to request you will have the goodness to say whether the statement is in any respect inaccurate.

"The Council will especially feel obliged by your informing them whether the inference they have drawn from the statement of Mr. Clutterbuck is correct that no evidence was offered in support of the charge, and that he had no opportunity of dis-

proving it at the time, and that the charge was not in issue in the cause.

"I have the honour to be, sir, your very obedient servant,
(Signed) "Wm. Strickland Cookson, President.
"J. W. Huddleston, Esq., Q.C., Temple."

The following is Mr. Huddleston's reply:—

"2, Paper-buildings, Temple, Nov. 7.

"Sir—I beg leave to acknowledge the receipt of your letter of the 12th of September, which should have received earlier attention from me had I not been absent from town during the long vacation.

"I entertain the greatest respect for the Council of the Incorporated Law Society; but on full consideration of your letter I must decline to answer the questions put to me by that body.

"Were I to do so I feel that I might be recognising the right of the Council of the Incorporated Law Society to inquire into the course taken by an advocate during the progress of a trial; and I cannot permit a privilege of counsel established for the benefit of the client to be impaired by any step which I might otherwise be disposed to adopt.

"I the more readily adhere to this conclusion, as it is obvious that the Council of the Incorporated Law Society can obtain from other sources the information which they seek to obtain from me.

"I have the honour to be, Sir, your obedient servant,
(Signed) "J. W. Huddleston.
"W. Strickland Cookson, Esq.,
President of the Incorporated Law Society, &c., &c."

Mr. Huddleston, in this letter, appears to assume that the not uncommon trick of counsel's abusing the attorney of the other side has by force of usage become "a privilege of counsel established for the benefit of the client." We take issue with him, however, upon this point, and deny that counsel have any more right to make injurious observations upon the attorney of the other side—unless such observations are relative to the issue, and are supported by evidence—than they would have to do so in the case of a perfect stranger to the cause. It may be equally injurious, and is no doubt generally intended to be *more* injurious, to the party on the other side than it is to his attorney, although the latter is ostensibly the direct object of attack; but it is intolerable that counsel should claim the privilege of irresponsibility for untrue statements publicly made to the injury of an attorney in the cause, especially where such statements are irrelevant to the issue, are wholly unsupported by anything like evidence, and are moreover introduced for the manifest purpose of prejudicing an adversary's case.

During the late session of Parliament a committee of the House of Commons was appointed to inquire into the nature of the burthens affecting merchant shipping. Its report has been lately published. It treats of a variety of topics, the discussion of which in this Journal would be out of place. There is one, however, occupying a prominent position in the report which cannot fail to interest the professional reader. We allude to the legal liabilities at present imposed upon the British shipowner, partly through the operation of Lord Campbell's Act (9 & 10 Vict. c. 93), and partly through the operation of the Merchant Shipping Act of 1854. There can be little doubt that the responsibility incurred under these statutes is frequently of an oppressive and even ruinous character. In its zeal for the protection of the public the Legislature appears to have dealt too hardly with the rights of the shipowner. To do justice to both is the problem to be solved, and the committee has done its best to solve it. We shall on a future occasion explain how its proposes that this should be done. In the meantime Mr. W. S. Lindsay is in the United States, endeavouring to obtain the sanction of the American Government to certain international arrange ments respecting the liabilities in question; and the Chamber of Commerce of New York has passed resolutions approving of this proposal, which, if carried into effect, will prove of equal advantage to both countries.

The first resolution relates to the subject of collisions at sea. It affirms the principle that the liabilities of the shipowners of both countries should be uniformly the same, and recommends that actions against them in the courts of either country should be governed by the laws of its own; that the actual value of a defaulting vessel should determine the liability; and that the same rule of the road should be adopted in both countries. The committee also recommends the assimilation of the laws of England and the United States in reference to crimes committed at sea, and that the consuls of both countries should have jurisdiction over all petty crimes and offences committed on board the vessels of either, whether in port or at sea.

The State of New York, by its constitution of 1846, established an elective judiciary with short terms of office; and the startling precedent was speedily followed in many other States of the Union. After a short trial of fourteen years this rash defiance of all experience, ancient and modern, has already shown itself to be mischievous in the extreme. It has been found, according to the testimony of a New York contemporary, that all the better class of lawyers, the men who by years and service merit the honours of the profession, shrink from the nomination to the bench as if it involved contamination. The class of men who from time to time as vacancies occur offer themselves as candidates for the judicial office are becoming worse and worse. At a recent election for judges at Brooklyn, the great majority of the delegates named by one of the political parties for the purpose of ensuring the election of their own partisans was composed of convicted thieves and fellows of the pugilistic trade. The District Attorney of King's County, U. S., in a speech to a political meeting of the opposite party, thus describes these delegates:—

"I hold in my hand a list of the delegates who purport to have been elected to the convention. In the first ward, two delegates are named who have recently been indicted and convicted of crime since the 1st of January, who are well known to the police; and who nevertheless seem to have become essential to the representation of the first ward in democratic conventions. Then, glancing at the list of the sixth ward, there is a delegate who has been arrested over and over again for crime in this city, indicted and punished, well known as a disreputable character—an outlaw dangerous to society in every way—and yet he has become so important in our local government that he is sent to a convention to select our judges, sheriffs, and other officers."

And so he goes on at considerable length to describe numerous other delegates who are men of similarly bad repute, and he adds:—

"Here is a convention come together to nominate a city judge, to whose hands are to be entrusted the highest and most sacred responsibilities. A man could not have got a nomination unless he stood well with these dangerous classes, and that is a bad premonitory symptom, as the doctors would say. To obtain their good-will he must have catered to their tastes, and taken pains to stand well with them, in order to get their support as against respectable men. He is thus demoralized from the start, and entirely unfitted for the faithful discharge of the judicial duties. I do not believe in the election of judges; it is one of the greatest wrongs ever inflicted on a free society, at the best. But what does it become when judges are nominated by these men whom I have described from the criminal records? What is his position if elected? Why, he is in the hands of the Philistines. Mark the career of such a judge. You will find him yielding and conceding to the criminal element in our community, instead of administering justice."

It must be borne in mind that this is a picture drawn by an enemy; but it is nevertheless too well corroborated by unimpeachable testimony from all quarters to be

seriously doubted as to its general truth. Even the Americans themselves are beginning to be startled at the lamentable social results which have already arose from their system of elective judgeships. A very trenchant letter upon the subject, from Judge Edmonds, of New York, has just been published, and caused some sensation in that State. It appears that the office of Recorder of the city of New York is the most important and remunerative in the State; and the judge, who is a lawyer of unquestionable merit, had been asked to put up as a candidate for the office, which is now vacant. In reply, after other reasons, he says, "My tenure of office would be only three years: while on the bench I should of course be withdrawn from political action, and could not resort to the usual means to secure my continuance in it; while on the other hand, ambitious aspirants for the position would be restrained by no such consideration, and would easily oust me long before I could give any permanency to the character I should aim to give my Court." To this cause Mr. Edmonds attributes the fact that only four out of fourteen justices of the superior courts have been re-elected; while there is not a single instance of the re-election of a justice of the supreme court or a recorder. Besides, he adds, "the shortness of the term would continually subject me to the imputation of shaping my decisions in reference to a re-election. I experienced this at the close of my judicial career, and I had abundant cause to know that I was thereby shorn of my independence, and my usefulness was impaired. I felt this so keenly that I then resolved never to undergo it again." We could add other testimonies on this subject to the same effect as that of Mr. Edmonds and the District Attorney of King's County, but we have already dwelt rather long upon this topic. We shall only add, that the case bearing on the rights of proprietors of horse railways, which will be found elsewhere in these columns, was decided by a tribunal which has not yet been subjected to the deleterious influence of popular election, the State of Massachusetts being one of the few States in the Union which have resisted the bad precedent set by the State of New York. As a matter of fact, perhaps we might say as a consequence, the decisions of the Supreme Court of Massachusetts are better worth the attention of English lawyers than those of most other tribunals of the United States.

The Liverpool Law Society has published its report for the past year. One of the most important subjects that has occupied its attention recently has been the appointment of a second stipendiary magistrate which the committee has left no means untried to effect, without success however for the present. The Society recommends the establishment of a professional Exchange to facilitate the communication of members; and a Law Clearing House for the settlement of members' accounts. The report contains a review of the various important measures of last session, with remarks thereon by the committee; and the following observations relate to some important points of practice:—

"Your committee carefully considered the question of the extent of the right of the solicitor for the mortgagee to refuse to produce the deeds in his possession, except to abstracts furnished by himself, and they considered it to be the practice that the mortgagee's solicitor was entitled to furnish an abstract of all deeds in his possession, but not an abstract of deeds not in his possession and covenanted to be produced, and they accordingly considered that he would be justified in refusing to produce the deeds for examination, with an abstract furnished by any other party; but exceptional cases of this kind may probably arise."

The committee also discusses the question which was raised two or three years' ago in the well-known case of *Viney* v. *Chaplin*, (6 W. R. 562), as to whether a vendor's or mortgagor's solicitor is entitled to receive the purchase or mortgage money, by virtue of his office, and of his having in his possession the deed of conveyance or mortgage with endorsed receipt:—

"The subject of giving an authority to solicitors to receive purchase and other moneys in the settlement of transactions when their clients were not personally present, but had signed receipts on the deeds, has been discussed at great length, and your committee have communicated with the Incorporated Law Society, and the Metropolitan and Provincial Law Association, on the subject. The London practice is, almost invariably, to require it, and the council of the former body are desirous to adhere to that practice; but the committee of the Metropolitan and Provincial Law Association consider that it would be productive of an inconvenience to lay down an absolute rule to require such an authority in all cases. Your committee think that the law should be changed in that respect, and that the delivery of the receipted document by the solicitor (the recognised agent of his client) should discharge the person paying the money from any responsibility; however, as this question of law is again raised, and is now waiting the judgment of the Court of Exchequer, your Committee have thought it desirable to take no further steps until that judgment be known, particularly as they understand that the parties intend to take the decision of the Court of Error."

It is expected that the new orders in Chancery relating to evidence will be issued before Hilary Term. We believe they have been already drawn, and that they are now under the consideration of the Lord Chancellor, and the other equity judges. The expectation is general that with the next term we shall see the introduction into chancery proceedings of *viva voce* evidence in open Court.

The Middlesex magistrates propose, under the provisions of the 23 & 24 Vict. c. 116, to offer the coroners for the county salaries in lieu of fees, mileage and allowances calculated upon an average of the last five years. Three of the coroners attended the meeting of the magistrates at which this proposition was made, and objected to it, Mr. Wakley threatening an "appeal to a higher authority," whatever that may mean.

The Inns of Court Rifle Volunteers will be inspected by Colonel Mc Murdo, in Richmond Park, to day at 3 o'clock. Should, however, the weather prove unfavourable, the inspection will take place in Gray's-inn-square, at the same hour. We believe that it is proposed that the Corps should entertain Colonel Mc Murdo, this evening, at the Albion, Aldersgate street.

THE CASE OF *SHEDDEN* v. *PATRICK*.

A case which has occupied for fourteen days the attention of a court, where a heavy mass of business is depending, may naturally be supposed by hasty readers of the daily newspapers to be of a difficulty proportioned to its length. But really the case of *Shedden* v. *Patrick* involved no very perplexing question either of fact or law; and it is principally remarkable for the ability displayed by the female petitioner who conducted her own and her father's case, and for the unusual indulgence which allowed this lady to be occasionally assisted by counsel while still supporting the main burden of long and intricate statements and examinations of witnesses by her own retentive memory and ready tongue. Miss Shedden is certainly the most eminent of the ladies who of late years have rather frequently undertaken to be their own advocates. It is to be feared that this practice is a growing one, and that the course of business in our courts will be obstructed, and the temper of the judges tried, by an increasing number of vehement, and perhaps eloquent, but discursive and almost endless

speeches on the model of those to which Sir C. Cresswell and his two associates have listened during so many tedious hours of the last term. Notwithstanding the desponding anticipations of the presiding judge, the statements and evidence in the case did actually reach their end on Tuesday last, the fourteenth day. There was a great deal of relevant matter to consider, but it had been mixed throughout the hearing with a great deal more that was irrelevant, and so the Court had had time enough to make up its mind during the hearing, and accordingly judgment was forthwith delivered to the effect that the petitioners had wholly failed in making out their case.

The suit was instituted under the Legitimacy Declaration Act of 1858, to obtain a declaration that the father and mother of the elder petitioner, Mr. Shedden, were lawfully married prior to his birth, and that he was their legitimate son and heir, and a natural born subject of the British Crown. The younger petitioner, Miss Shedden, was Mr. Shedden's daughter, and as it was stated that she has a brother living, it appears that her surprising efforts in the conduct of the case have been sustained by feeling rather than by interest. She seems to have devoted herself, with the ardent enthusiasm and imperfect logic of her sex, to the task of rescuing the memory of her grandmother from what she will no doubt believe to her last hour to be a calumnious and wicked imputation. Evidently she has taken up a conviction of the purity of her family history which will not be shaken by the most patient hearing and the most exhaustive arguments of adverse judges. So long as Miss Shedden lives she will assert that injustice has been done her in the Divorce Court; but we think that impartial spectators of the proceedings will be of opinion that, neither personally nor by counsel, was there any hope of her satisfying the Court of the truth of the allegations of the petition. The case which she propounded was, that William Shedden, her grandfather, the owner of certain estates in Ayrshire, went about the year 1770 to North America, where he married his first wife, who soon died. The petitioners alleged that in 1790 William Shedden married at New York his second wife Ann Wilson, and lived with her as her husband till his death in 1798. He had two children by Ann Wilson, a daughter still living, and the elder petitioner. It was common ground that William Shedden was married to Ann Wilson on his death bed. The respondents alleged that this was done in order to legitimatize, as far as possible, the issue of an illicit intercourse. The petitioners undertook to prove that this ceremony was performed for the purpose of giving notoriety to a previous private marriage; that William Shedden and Ann Wilson had never lived together otherwise than as man and wife, known and visited as such by the best society in New York; and that his children were for all purposes legitimate, and inasmuch as he had adhered to the royalist side in the American war, and had retained his character of a British subject, they also were entitled to all the rights of natural born British subjects. The principal opponent of this claim was a nephew of William Shedden, named William Patrick, one of the children of the marriage of William Shedden's sister with John Patrick, who now holds certain estates in Ayrshire, by the title of heir to William Shedden, and which title of course depended upon the illegitimacy of the children of Ann Wilson. The main question in the cause, therefore, was whether these children were born in lawful wedlock, and it does not seem to us that this question was so much involved in doubt as might have been expected at so great a distance both of time and space. The principal respondent, although ninety years of age, is still in possession of his faculties, and there are several important witnesses yet living at an advanced age.

The respondents relied not only upon the evidence which they produced to prove that Ann Wilson was the mistress, and not the wife, of William Shedden, but also upon three previous judgments of competent tribunals, which, as they alleged, had conclusively decided in their favour. There had been in 1801 a proceeding in the Scottish Court of Session by the guardian of the elder petitioner, then an infant, in which it was determined that he was not a legitimate son of William Shedden; and this decision was affirmed on appeal by the House of Lords. There had been in 1848 a further proceeding by the elder petitioner in the Court of Session, in which it was declared that the decree in the former suit had not been obtained by fraud, and which upon the merits re-affirmed the sentence of illegitimacy; and this decision also was sustained on an appeal to the House of Lords in 1854. And lastly, there had been a proceeding in the Court of Session as a consistorial court, which was dismissed. Upon the legal effect of these three judgments as a bar to the claim of the petitioners, Miss Shedden would have been allowed the assistance of counsel if it had been necessary. The Court, however, decided in favour of the petitioners, without hearing any argument on their side, on the ground that by the statute the Attorney-General was a necessary party to the present proceeding, and as he was not a party to the former suits, the respondents' plea of *res judicata* could not prevail. It had been further contended that the present proceeding was barred by the 10th section of the statute, under which it had been instituted. That section, however, only provides that no proceeding "to be had" under the Act shall affect any final judgment already pronounced, and does not say that no proceeding shall be had which may affect any such final judgment. Under the statute, therefore, the petition might be presented, and if the evidence in support of it were sufficient, a declaration might be obtained as prayed; but whether such a declaration could alter the right to property was at least doubtful. If the petitioners succeeded in making out their case, the respondents might then fall back upon the judgments of the House of Lords; but they could not set them up as a preliminary bar to the investigation. The Court, therefore, proceeded to hear all the evidence, material and immaterial, that was offered to it on several weary days; and although we may lament this great consumption of public time, it was nevertheless desirable that the case should be fully heard, and decided, as it has been, upon its substantial merits.

One of the principal features in the evidence was a letter alleged to have been written by William Shedden to the respondent William Patrick, in 1798, a few days before his death. That letter contained this passage:—"I am now going to quit this world. I have married Miss Ann Wilson, which is approved by my friends here, and which restores her and two fine children I have by her to honour and credit." If that letter was genuine there was an end of the whole case; and there really does not seem to be any ground to doubt its genuineness. It is seldom that a case which necessarily or unnecessarily has been protracted over many days can be brought to such a simple point; and when the controversy is thus reduced to its true dimensions we are filled with amazement and consternation at the enormous amount of time occupied by it. The combination of party and advocate in the conduct of the petitioners' case was of course an exceptional indulgence. It appears to be an excellent contrivance for wasting valuable time. If fatigue stops the party the counsel takes up the talk; and if the counsel is restrained by the habit of only speaking when he has something material to say, the party has no such scruples. In the present instance, both the course of the proceedings and the resolution and energy of the female petitioner have been such as are not likely to become common in our courts. But even after making every requisite allowance for these peculiarities, it is an alarming symptom of the rise of the tide of talk that fourteen days should have been occupied by a case that does not admit of any reasonable doubt.

STATISTICS OF THE COUNTY COURTS FOR 1859.

Our present County Courts were established by the 9 & 10 Vict. c. 95, but the jurisdiction conferred by that statute has since been frequently extended, as to the amount for which suits may be instituted, also to matters of insolvency, the arrest of absconding debtors, contested cases of probate of wills, charitable trusts, and to the protection of the property of married women deserted by their husbands. Prior to 1846, the jurisdiction of the then county courts extended only to 40*s*. But that amount was much more valuable when these courts were founded by Alfred the Great than the same denomination of coin is at present; so that the Act of 1846 may be considered as having restored, rather than created, the monetary jurisdiction of these courts. The denomination or value of 40*s*. runs through all our early legal records, as indicating almost a distinction of caste. The judges of these courts were the freeholders, presided over by the Earl. There existed prior to 1846, many other courts by prescription, and also manorial courts, having a jurisdiction as to claims of a small amount; upwards of 100 courts of request and courts of conscience were likewise established from time to time by statute, 46 of these being under separate local Acts. The Act of 1846 did not abolish these courts; but, as it defined the jurisdiction and procedure, and settled a moderate scale of the fees and costs of the county courts, it has, with the exception of the few instances hereafter noticed, virtually superseded the other courts. The Friendly Societies Act of 1855, the Summary Procedure on Bills of Exchange Act, 1855, and the Joint Stock Companies Act, 1856, have been extended to the county courts. The expense of maintaining the county courts, which amounts to almost the yearly sum of £250,000, is defrayed, with the exception of the salaries of the ministerial officers, by an annual vote. The Court is now by statute a court of record, and has an equitable, as well as a legal jurisdiction. It has a *quasi* exclusive jurisdiction as to claims under £20, with a few exceptions, and also as to cases under the "Protection Acts," and in some matters relating to Friendly Societies, in all which cases the judge's decision is final. It has a concurrent jurisdiction for claims not exceeding £50, but the judge's decision is open to appeal. It also has jurisdiction in cases of replevin, and ejectment between landlord and tenant. By sect. 23 of 19 & 20 Vict. c. 108, the parties—except in cases of criminal conversation—may by consent confer a jurisdiction upon the county courts. They have also a jurisdiction as to cases of partnerships, distributive shares on intestacy, and legacies up to £50. But when the claim exceeds £5, either party may require a jury to determine the action.

The plaints entered in the county courts in 1859 (including 61 cases sent from the superior courts) amounted to no less a number than 714,623. Of these 373,657 were adjudicated upon, of which only 988 were determined by a jury. No very conclusive inference can be drawn from the paucity of cases in which the parties exercised their right of having the aid of a jury, as to the less urgent necessity supposed to exist for such a tribunal in civil matters; because, as the claimant for a jury should pay the expense of this aid in the first instance, the smallness of the amount disputed, or the poverty of the opposite party, might be a sufficient motive to deter a party from such a course, even though he should prefer it. Moreover, as the parties themselves often conduct their cases in the county courts without professional aid, they may not be mindful of their right to claim a jury. The procedure of these courts being practically of an almost exclusively executive character, used to enforce claims "rather than to determine disputed liabilities," we cannot, notwithstanding the confessedly general impression as to the uselessness of a jury as a method of trial in all civil cases, infer that the statistics of the county courts furnish any evidence of the actual influence of such an opinion on the conduct of persons who really had some important question of fact to be adjudicated upon. One peculiar circumstance also tends to vest the entire jurisdiction in the judge. He possesses a power not vested in the judges of the superior courts, of ordering that a judgment, when recovered by the plaintiff, if under £20, shall be paid by instalments. The Act appears to be silent as to the power of the judge to direct interest to accrue until the last instalment be paid. Yet this is an important element for the satisfactory exercise of such a discretion in the judge. The total number of judgments was for the past year 442,500; for the plaintiff, 285,984; for the plaintiff by consent, 137,978; for plaintiff by default, 588; of non-suit, 8,861; for defendants, 9,089. Of judgment summonses to enforce payment by commitment, 118,872 were issued, of which only 55,082 were heard, the issuing of the rest having probably produced the desired effect. The number of warrants of commitment issued was 27,284; of debtors imprisoned, 9,003; of executions issued against goods, 98,589, and of sales, 3,776. The total amount for which plaints were entered was £1,754,971; the amount for which judgments were obtained by plaintiffs on original hearings was, for debt, £851,732; for costs, £37,628. The total amount of fees on all proceedings was £215,623. The want of a *bonâ fide* defence in most of the cases that fall within the cognizance of these courts is shown by the facts noticed as evidence for this in the report, that more than one-half (52·2 per cent). of the cases entered were settled without being brought before the Court, and that 64·6 per cent. of the judgments were for the plaintiff, and 31·2 per cent. were by consent for him also, the terms of payment, when settled, being capable of being enforced by the Court, so that in 96 cases nearly in the 100 the issue was for the plaintiff. Of the remaining cases, 2 per cent. ended in a non-suit, so that in 2 per cent. only was the issue for the defendant. Recourse was seldom had to extreme remedies on these judgments.

The commitments for debt did not exceed 2.2 per cent. The sales on executions did not exceed 0·8 per cent. The total amount sought to be recovered was £1,754,971, being an average of £2 9*s*. 1*d*. for each case. Judgments were obtained for rather less than half of the former sum. The nature of the litigations in these courts, as is observed by the report, is shown by the judgments, 250,189 of which were in cases of 40*s*. and under; 72,829 for sums from 40*s*. to £5; 26,790 for sums from £5 to £10; 11,225 for sums from £10 to £20; 3,631 for sums from £20 to £50; and 16, by consent, for sums above £50. It would be an important improvement in the statistics of these courts if the returns distinguished the legal from the equitable cases. We could thus infer how far the legal machinery of the superior courts of common law was adequate to the requirements of the community; for, although the amount for which claims are sought to be enforced in the two classes of superior and county courts is necessarily different, the average character of the causes of action may be fairly presumed to be the same.

Under the Charitable Trusts Act 140 cases were heard, in 137 of which relief was granted. Protection orders to married women deserted by their husbands were registered in 719 cases; in 6 such cases the orders were, on hearing, dis-

charged. The cases of insolvency were 1,944 ; of protection, 1,782. There were only two cases under the Probate Act.

Of the Borough Hundred Manorial Courts, and the courts held under local acts, only 33 are in active operation or demand, and in but 9 of these did the total of the amounts claimed exceed £1,000. But in 3 of these courts suits were instituted for the following large amounts, viz., in the Court of the Sheriff of London 9,677 plaints were entered for a total of £31,979 ; in the Manchester Court of Record, 3,225 writs were issued for a total of £42,253, and in the Court for the Hundred of Salford, 1,658 writs were issued, for a total of £21,368. In the Lord Mayor's Court, London, which has a varied and peculiar jurisdiction in matters connected with the City customs, foreign attachments, sequestrations, apprenticeships, &c., as well as in suits for debt, and in matters of equity, the total number of proceedings was 3,754; the total amount of claims, £392,978; and the total amount of fees, exclusive of costs, £1,869. In the Stannaries Court of Devonshire and Cornwall, which has an exclusive jurisdiction as to suits affecting the miners there, except as to land or life, decrees on the equity side were, in the past year, obtained for a total of £6,345, with £534 costs, and £208 court fees; and on the civil side plaints were entered for a total of £1,150, and judgments obtained for a total of £442.

The county courts adjudicated upon more than half of the total of petitions filed under the Insolvency Acts during the past year, and upon nearly one-half of the petitions filed under the Protection Acts.

As statistics, however, are valuable only when complete, we shall defer stating the statistics of the county courts as to insolvency until we come to consider the statistics in insolvency generally, when a consideration of the several items, one with another, may best help us to form our estimate of the working of this species of jurisdiction, as also of the policy of the law generally which allows imprisonment to be inflicted upon debtors. It may, however, be here stated that in cases of absconding debtors, 69 warrants to arrest were granted; the debt and costs were paid in 73 cases, (there is probably a mistake in these figures); and in 16 cases the warrant was suspended.

The statistics of so many warrants of commitment, and of such a number of actual imprisonments, under the ordinary jurisdiction of the county courts, suggest serious considerations as to the policy of the law in allowing commitments for debts of small amount. In Ireland the minimum amount for which a debtor may be committed is, we think, judiciously settled at £10. A similar rule in England (if, indeed, imprisonment for debt should not be wholly abolished), would not affect any proper credits, and would prevent the loss entailed upon the unhappy debtors by the present system, as also the expense of prisons *pro tanto* upon the public. The small ratio of the commitments to the warrants for commitment does not prove a healthful action of the system; as the debtors, who thus at last paid their debts may have been either very litigious, and should not have been trusted, or, if unable to pay previously, had, perhaps, finally to borrow at a still higher rate of usury or overcharge, in order to resist this undue pressure of the law. Both these classes, the litigious and the oppressed, probably return, in some fixed cycle, to swell the statistics for each year ; as the same criminals, unreformed by punishment, return to the cells from which they often before issued.

Imprisonment for small debts is aggravated still more in its severity by the fact that it does not operate as a satisfaction of the debt, which may be sought to be enforced by subsequent executions against the goods of the debtor, or by his re-commitment, if, having acquired the means of payment, he will not discharge his liability, upon all of which facts the decision of the judge is conclusive.

The number of appeals was only 20, of the result of which the statistics do not inform us; of orders to stay proceedings, 64 ; and of writs of *certiorari* to remove proceedings, 135. The statistics of these courts do not give the number of days on which the judges sat in each court, nor a general average of their sittings ; yet, this is a most important element in all considerations relating to the future improvement of these courts.

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF QUEEN'S BENCH, WESTMINSTER,

(Sittings in Banco, before Lord Chief Justice COCKBURN and Justices HILL and BLACKBURN.)

Nov. 26.—*Ex parte Howard.*—In this case an application was made for a rule calling upon Thomas Hinton, the publisher of the *Portsmouth Guardian*, to show cause why a criminal information should not be filed against him for a series of libels published in that journal, imputing to the applicant, Mr. Howard, the town clerk of Portsmouth, corruption in his office. A series of articles had been published in that newspaper commencing in August last, and continued to the 22d inst., imputing to the applicant that he had taken advantage of his position as town clerk to get the money of the ratepayers expended in publishing advertisements and lists in a journal in which Mr. Howard had some interest to the exclusion of other journals published in the same town, and read by a larger number of the working classes, whose money was so spent.

Lord Chief Justice COCKBURN intimated that he did not think that the case was one for the interposition of the Court. The town clerk might very properly apply to the town council to liberate him from any imputation, but the Court could not interfere.

Rule refused.

COURT OF COMMON PLEAS, WESTMINSTER.

(Sittings in Banco, Michaelmas Term, before Lord Chief Justice ERLE and Justices BYLES and KEATING.)

Nov. 26.—*Shadwell* v. *Shadwell.*—The Court to-day gave judgment in this case which was an action brought by the plaintiff, a Chancery barrister, against the representatives of his uncle deceased, on a written promise made by his uncle to allow him on his marriage £150 a-year until such time as he should make £600 a-year by his profession. The annuity was paid for thirteen years, and five years arrears were due. The plaintiff averred that he never had made this amount by his profession. The defendant demurred to the promise set out in the declaration on the ground that it was without consideration, and also pleaded that the plaintiff was to continue in his profession as the ground of the promise, and averred that he had left it, except to practise as a revising barrister.

The Court gave judgment for the plaintiff, but Mr. Justice Byles differed in thinking that there was no consideration for the promise to support the action.

Nov. 26.—*Bulmer* v. *Morris.*—This was a consolidated appeal from a decision of the revising barrister for the West Riding of Yorkshire, who had decided against the claim of a member of a joint-stock company to be placed on the register of voters for the county in respect of his interest in the corporate property of the company of which he was a member.

The Court affirmed the decision of the revising barrister.

COURT OF EXCHEQUER.

(Sittings in Banco, before the Lord Chief BARON, Mr. Baron BRAMWELL, Mr. Baron CHANNELL and Mr. Baron WILDE.)

Nov. 26.—*Fiddey v. Oxlade.*—This was an action, by an attorney, to recover costs, arising out of an action which he brought for the defendant against another person, under the Bills of Exchange Act. The twelfth day allowed by the statute to

sign judgment fell upon a Sunday, when the plaintiff signed on the following day.

The judgment was set aside by a judge at chambers, on the ground that Sunday ought not to have counted as one of the twelve days.

The defendant in the present action pleaded the signing by the plaintiff as negligence, when the under-sheriff before whom the case was tried told the jury that he was bound by a decision of the Lord Chief Justice to the effect that Monday was too soon, and therefore, the judgment was wrongly signed, whereupon the jury found for a much smaller amount than the plaintiff claimed.

A rule was moved for and obtained on the 3rd inst (*ante* p 4) on the ground that the judgment was rightly signed, and, if not, then there was neither negligence in law nor fact. It was stated to be a matter of importance to the plaintiff, who carried on an extensive agency business, to know whether the twelve days were inclusive or exclusive of Sunday.

The defendant in person now showed cause against the rule.

The LORD CHIEF BARON intimated that, inasmuch as there existed a difference of opinion on the bench as to whether the judgment was rightly or wrongly signed, under the circumstances detailed, and, as the question was one of considerable importance to the profession as well as the public generally, it was advisable that some settled rule should be arrived at on the matter. The rule, therefore, with the consent of both sides, was enlarged till next term.

CENTRAL CRIMINAL COURT.

NOV. 25.—The sittings of the above court were resumed on this day. The court was opened at 10 o'clock by the Right Hon. the Lord Mayor, who presided for the first time in that capacity. Mr. Russell Gurney, Q.C., the Recorder, Mr. Robert Malcolm Kerr, judge of the Sheriffs' Court, Aldermen Challis, Finnis, Sir R. W. Carden, Rose, Phillips, and Conder, Mr. Alderman and Sheriff Abbiss, Mr. Sheriff Lusk, Mr. Under-Sheriff Eagleton, and Mr. Under-Sheriff Gammon. The calendar was much lighter than usual.

Mr. James Mason, of No. 42, Chalcot-villas, Haverstock-hill, has been appointed a London commissioner to administer oaths in the High Court of Chancery.

Recent Decisions.

[*Equity, by* J. NAPIER HIGGINS, Esq., *Barrister-at-Law; Common Law and Criminal Law by* JAMES STEPHEN, Esq., LL.D., *Barrister-at-Law.*]

EQUITY.

TRUSTEE—SOLICITOR.

Pollard v. *Doyle*, V. C. K., 9 W. R. 28.

This case affords one of the harshest illustrations of the rule which deprives solicitor-trustees of their costs. A solicitor was the executor of a plaintiff in a suit to satisfy a judgment debt, to which the judgment creditors were parties. The plaintiff having died, the executor (the solicitor) revived the suit in his own name, and conducted it in a most beneficial manner, as it appeared, for the parties interested. The assignee of the judgment creditor, who resisted the payment of profit costs to the solicitor, it was admitted obtained the assignment subsequent to, and with notice of, a decree directing the taxation and payment of costs. The Vice-Chancellor held, however, that as between the plaintiff and the judgment creditors—although there appeared to have been no reason originally for making them parties—nevertheless, that between them a fiduciary relation existed, and, therefore, that the solicitor should be allowed no profit costs. This case is mainly useful as settling the point that there is no distinction between the case of a solicitor who is an express trustee, and one who is a trustee merely by construction of law; nor between the case of a solicitor-trustee and his *cestui que trusts*, and that of an executor and the parties beneficially interested in the estate of the testator. The latter point, however, appears to have been assumed as unquestionable by Lord Lyndhurst, in what may be considered the leading case on the general rule—namely, *New* v. *Jones*, 1 M. N. & G. 668 (n).

RAILWAY COMPANY—PARTIES.

Hare v. *The London and North-western Railway Company*, V. C. W., 9 W. R. 33.

An interesting question, as to the necessary parties to a suit instituted against a railway company and its directors, arose in this case. The bill was filed by a stockholder, for the purpose of setting aside as illegal and void an agreement entered into (in 1856) between the directors of the defendant's company, and six other companies, for the purpose of regulating the Scotch through traffic. An objection was taken upon the case being opened, that the suit could not proceed in the absence of the six other companies, who had been acting upon the agreement during the four years since its execution. The leading case upon the subject of parties, where any transaction of a public body, or of any of its members, is impeached in the Court of Chancery is the case of the *Attorney-General* v. *Wilson*, 1 Cr. & Ph. 1, in which Lord Cottenham laid it down, that where a liability arises from the wrongful act of several parties, each is liable distinctly from the others. In that case an information and bill was filed by the Corporation of York for the purpose of making five of its members personally liable to make good certain funds which it was alleged had been wrongfully dealt with by the defendants: for whom it was argued that the acts complained of were done by direction of the corporation; that persons acting in a corporate character are not personally liable; and that it would be unjust to fasten a liability upon five individuals out of a large number who had joined or acquiesced in the impeached transaction. Lord Cottenham held, however, that the suit was properly framed, and decreed the relief to the plaintiffs which they sought against the five individual defendants, in the absence of the other persons, who, it appeared, had joined or acquiesced in the transaction complained of. His Lordship, referring to the older case of the *Charitable Corporation* v. *Sutton*, 2 Atk., 400, said, "It was urged that as the injury had arisen from the misconduct of many, each ought to be answerable for so much only as his particular misconduct had occasioned;" but Lord Hardwicke said, "if this doctrine should prevail it is indeed laying the axe to the root of the tree. But if upon inquiry there should appear to be a supine negligence in all of them by which a gross complicated loss happens, I will never determine that they are not all guilty; nor will I ever determine that a court of equity cannot lay hold of every breach of trust; let the person guilty of it be either in a private or a public capacity." "In cases of this kind," Lord Cottenham continues, "where the liability arises from the wrongful act of the parties, each is liable for all the consequences, and there is no contribution between them, and each case is distinct, depending upon the evidence against each party." In the present case, applying the principle laid down by Lord Cottenham, a suit might probably have been maintained against the directors individually, or such of them as were parties to the impeached agreement, if it could be shown that they had been guilty of a wrongful act which caused damage to the plaintiff; but the agreement having been acted upon by the six other companies for a period of four years, and the plaintiff seeking to set it aside altogether, and not merely to get compensation for the wrong which had been done, it was necessary to make the six other companies parties to the suit, inasmuch as they had a clear interest in the subject matter of litigation. The Vice-Chancellor, therefore, allowed the objection; and the case is useful as showing one important limitation to the rule laid down by Lord Cottenham in the *Attorney-General* v. *Wilson*.

COMMON LAW.

PROPRIETARY CHAPELS—RIGHT OF ENTRY, LAW AS TO.

Bosanquet v. *Heath*, Q. B., 9 W. R. 35.

Every parishioner has an undoubted right to resort to his parish church for the purpose of attending divine worship there; and cannot be compelled to leave it so long as he conducts himself there with propriety. And if the churchwardens or others (in or out of authority) cause him on any pretext—short of his improper behaviour therein—to be removed against his will from the edifice, he is entitled to sue them at law, and

recover damages for the assault. It is, however, important to remember that this right extends only to the *parish* church; and not to any other place of worship within its boundaries which has been dedicated and devoted by the proprietor thereof to the service of God, according to the rites and ceremonies of the Church of England; or which is used for such worship by a dissenting congregation. Such buildings (though in the case of a Church of England chapel they must be duly *licensed* by the bishop) retain their character of being private property; and the owners thereof may justify the removal of any person who, against their permission, persists in entering, though for the purpose of joining in divine worship. And in the present case, accordingly, the defendant in an action brought against him for removing the plaintiff from a proprietary chapel, successfully justified as the owner. It is apprehended that the law on this point with regard to *district* churches, which under the New Parishes Acts are the legalized places of Church of England worship for the inhabitants of a district, constituted for ecclesiastical purposes a new parish, is somewhat different; and that to such a church a resident within the district has a right to resort, concurrently with his common law right also to resort to the church of that parish to which he is assessed to the poor rate. But this is a point upon which it is not intended to express here any decided opinion. (See *Ball* v. *Cross*, 1 Salk. 165. *Dent* v. *Robs*, (You. & L. 1.)

ARBITRATION, LAW OF—AMENDMENT—ORDER OF REFERENCE "ON THE USUAL TERMS."

Thompson v. *Bowyer*, C. P., 9 W. R. 35.

Where an order of reference is made at the trial by consent "on the usual terms," one of such terms is as follows, "That the arbitrator shall have all the powers as to certifying and amending pleadings and proceedings and otherwise of a judge at *nisi prius*." Such a clause appears to form one of the usual terms from the book of practice (see Chitty's Forms of Practical Proceedings, 7th ed. p. 869); and that it is, in practice, usually inserted in such orders when fully drawn up, is common learning. In the present case an order agreed to be on the "usual terms," seems to have been inadvertently drawn up *without* the insertion of an amending clause which was afterwards, at the instance of the referee, inserted under a supplementary order. One of the parties to the reference opposed such order being allowed to stand, contending that its insertion varied the terms of the reference; and if it *had* so operated, the Court would have set it aside, for an order of reference cannot be varied (see *Morgan* v. *Tarte*, 11 Exch. 82). But the Court held that the original order being directed to be "on the usual terms," a power of amending co-extensive with that of a judge at nisi prius, became thereby vested in the referee without any express clause to that effect.

CRIMINAL LAW.

ABDUCTION OF GIRLS FROM THE POSSESSION OF THEIR PARENTS—9 Geo. 4, c. 31, s. 20.

Reg. v. *Timmins*, C.C.R., 9 W. R., 36.

The abduction of a child (whether male or female) under the age of *ten years* from its parents or guardian, either with the intent to deprive them of its possession or to steal any article on its person, is dealt with by 9 Geo. 4, c. 31, s. 21, and is thereby made a *felony;* and it is punishable with penal servitude or imprisonment. And by the preceding section of the same statute, the taking of an *unmarried girl*, under the age of *sixteen* years, "out of the possession" of her parents or guardian is made a misdemeanour punishable by fine or imprisonment, or both, though no intent can be shown, so that the taking be "unlawful."

The present case was an indictment under the last section, and it appeared that the prisoner had taken the girl in question (aged 14 years and 4 months) from her home, where she was living with her parents, for the purpose of having connection with her (with her own consent and without the knowledge of her father), intending at the time that the taking should be *temporary* merely. The time of her absence was three days. The question reserved for the judges was whether a temporary taking away, was sufficient to constitute an offence under the statute.

The Court held that under the particular circumstances of the case, the offence had been committed; the taking of the girl away for so long a period as three days, being inconsistent with her father's possession of her. But the Court confined themselves to the particular case before them, and declined to express any opinion as to what would be the effect of merely causing the girl to pass her father's threshold for an immoral purpose. It may be remarked that it has been, in several cases, held that the girl's consent in these cases is not material.—(See further as to the proper construction of this section of 9 Geo. 4, c. 31.; *Reg.* v. *Meadows*, 1 Car. & Kir., 399; *Reg.* v. *Robins* ib. 456, and *Manklelow's Case*, 1 Dears. C. C. R. 159.)

EMBEZZLEMENT, WHAT CONSTITUTES AN.

Reg. v. *Guelder*, C. C. R., 9 W. R., 38.

The question for the Court here was whether the following facts constituted the crime of embezzlement.

It was the duty of the prisoner, as the servant of certain overseers, to collect rates; and on receiving them, to pay them into a bank to the account of the overseers, obtaining in return from them a receipt in respect of the sums so paid in. It was also his duty to enter in a book kept by himself the various sums he received, thus charging himself at the half-yearly audit by his own book, and discharging himself by the overseer's receipts. The prisoner appropriated to his own use certain monies he so received; and then obtained from the overseers their receipts in respect of the same sums, by falsely asserting he had paid them into their account; and by this means he successfully passed through the next audit, though prior to such audit he properly entered into the book which he kept himself, the various sums he had in fact received and appropriated. The Court, without calling on the counsel for the Crown, held that on these facts the prisoner had been rightly convicted of embezzlement; inasmuch as he could not purpe himself from the offence of appropriating to his own purposes monies he had received, by afterwards charging himself with their receipt in his book.

There does not, in truth, seem the least ground to doubt of the propriety of the conviction in this case, though the propriety of reserving such a point for the consideration of the Court seems more questionable. Surely a clearer case has seldom been tried; or one in which the facts proved amounted more conclusively to that offence of embezzlement as defined in the books—namely, "a crime which is distinguished from *larceny* as being committed in respect of property which is not at the time in the actual or legal possession of the owner." (See *Reg.* v. *Gill*, 1 Dears. C. C. R. 289).

Correspondence.

EXONERATION OF DEVISED MORTGAGED ESTATES FROM THE MORTGAGE DEBT.

Until the 17 & 18 Vict. c. 113, commonly known as Locke King's Act, the devisee of a mortgaged estate was generally entitled to have the mortgage debt paid out of the testator's personalty in exoneration of the devised land. This rarely accorded with the testator's intention, and was frequently productive of hardship, the testator's widow and children being often left unprovided for, in order that the devisee of the mortgaged estate might take the property free from the incumbrance. To remedy this state of things the above-mentioned Act was passed, by which the mortgaged property is made primarily liable to its own burden, unless a contrary intention is expressed by the testator. What is a sufficient indication of a contrary intention becomes, then, a very important question. The first case in which it arose was that of *Woolstencroft* v. *Woolstencroft*, 8 W. R. 405, where the testator directed that "all his debts should be paid by his executors out of his estate." And Sir J. Stuart, before whom the case came, decided that mortgage debts were, by virtue of this direction, made payable out of the personalty in exoneration of the devised mortgaged land; for how, argued the learned Judge, could a testator more clearly indicate his intention that the devisee of the mortgaged estate should not be called upon to pay the mortgage debt, than by directing that it should be paid by somebody else? The next case was *Pembroke* v. *Friend*, 1 John. & H., 132, in which there was simply a direction that the testator's debts should be paid, but without saying by whom; and Vice-Chancellor Wood held that this was not sufficient to throw the mortgage debt on the personal estate. Had the testator, said the Vice-Chancellor, added the words "by my executors," there would have been something on which to build the conclusion

that he meant to express an intention that the general statutory rule should not apply; and, on the ground that there were no such words, he distinguished the case before him from *Woolstencroft* v. *Woolstencroft*, of which, however, he intimated no disapproval. The question next came before Vice-Chancellor Kindersley in *Stone* v. *Parker*, 8 W. R., 722, where the testator directed that his trustees should hold his residuary real and personal estate, "subject, in the first place, to the payment of his debts, &c.," upon the trust therein mentioned. And the Vice-Chancellor, following and approving of *Woolstencroft* v. *Woolstencroft*, held that the mortgage debts were thrown on the general residue in exoneration of the mortgaged land. Another case still remains to be mentioned, namely, that of *Smith* v. *Smith*, 10 Ir. Ch. R., 89, before the Master of the Rolls in Ireland, where the testator directed that his debts and legacies should be paid out of his residuary personal estate. And this was held sufficient to entitle the devisee of mortgaged property to have the mortgage debt discharged out of the residuary personalty. The last-mentioned case is particularly valuable, because the opinion of the judge was not founded on the preceding cases, which either were not then decided, or were not cited, but was arrived at quite independently of authority. We have, therefore the express decisions of three equity judges —Vice-Chancellor Stuart, Vice-Chancellor Kindersley, and the Master of the Rolls of Ireland, that a direction by a testator that his debts should be paid, or that they should be discharged out of his personal estate, is sufficient to throw mortgage debts primarily on the personalty; and although reliance cannot be placed on *Pembroke* v. *Friend* as sanctioning the same doctrine, yet Vice-Chancellor Wood certainly intimated no disapproval of it in that case. The doctrine, fortified by such authority, might reasonably have been considered as settled; but unfortunately it may now almost be said, slightly varying the old proverb, "*Quot judices et sententiæ*;" and no reliance can be confidently placed except in the decisions of the Court of ultimate appeal. The case of *Woolstencroft* v. *Woolstencroft*, as will be seen by referring to 9 W. R. 48, has been reversed by the Lord Chancellor. *Pembroke* v. *Friend* was referred to as the only other case which had occurred since the Act; and it is very much to be regretted that the case of *Smith* v. *Smith* was not mentioned, because the Lord Chancellor evidently had some hesitation in making up his mind; and that case might have turned the scale in favour of the Vice-Chancellor's decision. The authority of the Lord Chancellor's judgment is certainly much diminished by the fact that that case was not brought to his notice; and, although his decision is binding on all inferior courts, yet it is submitted that there are strong grounds for contending that it would not be upheld in the House of Lords. It is a rule of construction, now firmly settled, that the words of a testator should have their ordinary meaning, unless we can discover from the will that he has used them in a different or more limited sense. Now the word "debts," in its ordinary signification, includes debts of every description—debts by simple contract, debts by specialty, and mortgage debts; the only difference existing between these several kinds of debts consisting in the more or less extensive remedies which the creditor has for their recovery. Consequently, when a testator directs his debts to be paid by his executors or out of his personal estate, we are bound, according to the above-mentioned rule, to consider this as a direction that his mortgage, as well as other debts, should be thus paid, unless we can discover on the face of the will that the testator used the word "debts" in a more limited sense. There was nothing in *Woolstencroft* v. *Woolstencroft* to sanction such an hypothesis; the testator probably did not really intend to throw the mortgage debts on the personalty, but this is not the question. We have only to interpret his *words*; and it is our duty to give those words their full and ordinary meaning, unless it is clear from the four corners of the will that they were not used in this sense. The Vice-Chancellor's decision gave full effect to the direction that the debts should be paid by the executors, which, if the word "debts" includes mortgage debts, are no longer merely expressive of what the law would otherwise imply. The Lord Chancellor's judgment, however, puts a forced construction on the word "debts," reading it to mean "debts exclusive of mortgage debts"—and renders the whole of the direction that the debts should be paid by the executors objectless and of no effect. It seems, therefore, to offend against two well settled rules of construction, one of which tells us to read the words of a testator in their ordinary sense, and the other which directs us to give full effect, if possible, to every word and clause in a testator's will.

A. B.

TRUSTEES RIGHT TO BE RECOUPED IN RESPECT OF BREACH OF TRUST.

Previously to the marriage of A. with B. a sum of £1,200 was settled upon the husband and wife and their issue, and ought to have been invested in the trustees' names in the public funds upon the trusts of the settlement.

This was unfortunately not done, and the husband prevailed upon the trustees from time to time to advance him various sums of money to pay his debts and extricate him from his embarrassments, and he has in the aggregate received the whole of the trust fund.

The trustees, being liable to make good the same will pay the amount into court when required so to do in a suit instituted by one of the family, an infant, against them and their father for the due administration of the estate.

I shall be glad if any of your correspondents can inform me whether on application to the Court by the trustees against the husband, or otherwise, for payment by him into court of the amount received by him would be entertained and successful; and if they can refer me to any precedent on the subject it will be more agreeable.

M. A.

ROAD MURDER.

One of the grounds of the application of the Attorney-General for quashing the inquisition is that it was made on paper instead of parchment; surely this is untenable. Had the inquisition found that A. B. did murder the child, then undoubtedly parchment should have been used, as it would have at once become matter of record, upon which A. B. would have been indicted. The return of wilful murder against some person or persons unknown never could have become so, whatever further investigations might bring to light; in the latter case, therefore, paper would be sufficient, and granting this difference, the absurdity is not so great as the *Times* proclaims.

J. S.

THE TRUSTEES MORTGAGEES, &c., ACT.

The powers by this Act made incident to mortgages and charges, are by the 11th section conferred upon "The person to whom such money shall for the time being be payable his administrators, executors, and assigns." This is, of course, an imitation of the not unusual proviso in a mortgage-deed, that the power of sale may be exercised by any person entitled to give a receipt for the purchase money. The effect of this appears to be that if the apparent mortgagee be agent or trustee for another, or assign the mortgage debt, and the mortgagor receive notice that he is no longer authorized to receive the money, he will cease to fill the character to which the powers are annexed, and they will henceforth be exercisable (if at all) by his principal *cestui que* trust or assignee. Whereas, in an ordinary mortgage deed, the powers are merely equitable. This mode of defining the person by whom they are to be exercised is found to work well, because, although the exercise of the powers by persons to whom the money was not properly payable would not be of any effect between persons with notice, yet a purchaser for value without notice would be safe, provided nothing appeared on the deeds to show that the powers had been exercised by, or the mortgage money repaid to other than the right person. But whenever the mortgagor in a mortgage under this Act shall have the legal estate in him at the time of creating the charge, the 15th and 19th sections will confer legal powers; and it is by no means clear that this vesting of legal powers in a person defined by a purely equitable test will work equally satisfactorily. These legal powers were apparently introduced to enable a legal owner of real estate to confer all the powers of a legal mortgagee by a simple deed of charge, not requiring a reconveyance. But if I am right in holding that as soon as a mortgagor learns that he cannot properly repay the mortgage money to the apparent mortgagee on his sole receipt, the latter ceases to have this power, it is clear that no title can be considered good in which the dissolution of the legal estate depends on this power having been exercised by the proper person; and the only question remaining for consideration is whether a purchaser in possession of the legal estate *conveyed* by the mortgage deed is safe from the consequences of these powers being kept alive by circumstances of which he has no notice. If a mortgagor or purchaser under a power of sale pay the mortgage money to an apparent mortgagee, with notice that he is not authorized to receive the purchase-money, and through fraud or accident

it fail to reach the hands of the proper person, the mortgaged estate would, but for the protection given in equity to purchasers for value without notice, and for the Statute of Limitations, always continhe liable to pay the money over again. The person, then, to whom the money was properly payable previously to the improper payment still satisfies that description, and is therefore still entitled to exercise the legal powers of conveying the property after a sale, and of collecting the rents through a receiver; and as these powers extend to "all the estate or interest, which the person who created the charge had power to dispose of," they will take precedence of the legal estate conveyed by the same deed.

The courts of law will probably struggle to put some more limited construction on the words "the person to whom, &c.," but as a satisfactory construction must include "assigns" of the mortgage debt, and must be independent of any legal estate in the mortgaged properiy, this will be difficult, and any such limited construction will make the equitable powers conferred by the Act less extensive than those of an ordinary mortgage deed.

It is not unusual to convey property to a trustee upon trusts for sale, and for securing loans to more than one lender. In these cases each lender will have all these powers, and as they all arise under the same deed, many curious questions as to priority may arise, if the various lenders quarrel and try to exercise their powers.

Of course, the Act should be expressly excluded from every deed for securing the repayment of money, and in case a clause to that effect should be omitted, care should be taken to preserve satisfactory evidence that the mortgage money was repaid to the proper person, as it is possible that, without such evidence, the fact that a mortgago to which the Act applied had affected the legal estate might be held a valid objection to the title. H. R. D.

The Provinces.

Liverpool.—The Liverpool Association for the Promotion of Social Science held its first meeting on the evening of Tuesday the 20th inst. at the Lecture Hall of the Royal Institution. Thomas Stamford Raffles Esq., stipendiary magistrate, in the chair. The following papers were read at the meeting,—"The Relation of Statistics to Social Science" by Mr. Danson, and on "The Treatment of Adult Criminals," by Mr. George Melly. Considerable discussion ensued upon the reading of the latter paper in which the institution of a Court of Criminial Appeal was strongly advocated.

Foreign Tribunals and Jurisprudence.

(*Condensed from the Boston, U.S., Monthly Law Reporter.*)

SUPREME COURT OF MASSACHUSETTS.

Commonwealth v. Ira Temple.

The legislature, exercising the sovereign power of the State, either by general law or special enactment, have control of all public easements and accommodations for the general benefit.

The right of every one to use the highway is equal, but each is bound to a reasonable exercise of his absolute right.

Where a driver of a waggon made use of the track of a horse-railroad for the wheels of his waggon, and upon the approach of the car behind him, refused to move off the track when requested by the conductor of the car, although he had room and opportunity so to do:

Held, that he was liable to indictment therefore.

Held, also, that if the driver wilfully intended to follow his own convenience, in violation of the equal rights of others, it would be sufficient proof of a malicious motive on his part.

A novel question arose in this case as to the rights of the owners of a street railway—

The following judgment of Shaw, C.J., sufficiently discloses the facts, and is interesting to English lawyers on account of the propositions of law which it contains.

Shaw, C.J.—Since horse-railroads are becoming frequent in and about Boston, and are likely to become common in other parts of the Commonwealth, it is very important that the rights and duties of all persons in the community, having any relations with them, should be distinctly known and understood, in order to accomplish all the benefits, and, as far as practicable, avoid the inconvenience arising from their use. This is important to proprietors and grantees of the franchise, who expend their capital in providing public accommodation, on the faith of enjoying with reasonable certainty the compensation in tolls and fares which the law assures to them; to all mayors, aldermen, selectmen, commissioners or surveyors especially appointed by law for the care and superintendence of streets and highways; to all persons for whose accommodation in the carriage of their persons and property these ways are specially designed; and to all persons having occasion to use the ways through or across which these horse railroad cars may have occasion to pass. These railroads being of recent origin, few cases have arisen to require judicial consideration and no series of adjudicated cases can be resorted to as precedents to solve the various new questions to which they may give rise.

But it is the great merit of the common law, that it is founded upon a comparatively few, broad, general principles of justice, fitness, and expediency, the correctness of which is generally acknowledged, and which at first are few and simple; but which, carried out in their practical details, and adapted to extremely complicated cases of fact, give rise to many, and often perplexing questions; yet these original principles remain fixed, and are generally comprehensive enough to adapt themselves to new institutions and conditions of society, new modes of commerce, new usages and practices, as the progress of society in the advancement of civilization may require.

In the first place, all public easements, all accommodations intended for the common and general benefit, whatever may be their nature and character, are under the control and regulations of the legislature, exercising the sovereign power of the State, either by general law or special enactment. It may be done by a charter, or a special act of incorporation, in case of a bridge over broad navigable waters; or where the necessity for its exercise is of frequent recurrence, it may be by the delegation of power to special tribunals, or municipal government, by general laws.

Again, when the entire public, each according to his own exigencies, has the right to the use of the highway, in the absence of any special regulation by law, the right of each is equal; but as two or more cannot occupy the same place at the same time with their persons, their horses, carriages, and teams, or other things necessary to their use, each is bound to a reasonable exercise of his absolute right in subordination to a like reasonable use of all others; and not to incumber it over a larger space, or for a longer time, to the damage of any other, than is reasonably necessary to the beneficial enjoyment of his own right. If an adjacent proprietor has occasion to stop at his own gate with a carriage or team, if he has occasion to deliver wood, coal, or other necessaries; or if he is a trader, to deliver or receive merchandise, he must place his team or carriage, for the time being, in such manner as to obstruct the way for the use of others as little as is reasonably practicable, and remove the obstruction within reasonable time to be determined by all the circumstances of the case.

So in the actual case of the highway. Each may use it to his own best advantage, but with a just regard to the like right of others. Persons in light carriages, for the conveyance of persons only, have occasion, and of course a right, when not expressly limited by law, to travel at a high rate of speed, so that they do not endanger others. But all foot passengers, including aged persons, women, and children, have an equal right to cross the streets, and all drivers of teams and carriages are bound to respect their rights, and regulate their speed and movements in such a manner as not to violate the rights of such passengers. So in regard to drivers of fast and slow carriages; each must respect the rights of the other. Take a single illustration: if a heavily loaded ox-team be passing along a street wide enough for only one carriage, say fourteen feet, and other fast carriages follow, these last must, for the time being, be restrained to their speed, because this necessity results from these circumstances,—the narrowness of the way, and the ordinary slowness of the ox-team ahead. If parties thus travelling in the same direction should come to a portion of the way wide enough for carriages to pass each other, say twenty feet wide, it is obvious that if the driver of the heavy team would turn to either side, it would give the fast team room to pass, whereas, if he should keep the middle, the five or six feet on either side would not permit any carriage to pass.

Now, supposing no impediment should intervene, and no circumstance should render it dangerous for the driver of the slow team to bear off, in our opinion it would be his duty to do so, although it might suit his convenience better to keep in the middle; and his refusal thus to bear off would be an abuse of his own equal and common right, for which, if injurious to another, an action would lie; and, if it was a public highway, the party would subject himself to a public prosecution.

In some few cases, the regulation of the use of the highway is important enough to require a rule of positive law, requiring each traveller, when meeting, to turn to the right of the centre; —in some states to the left. But the circumstances, under which travellers may be placed in relation to each other are so various, that it would be impacticable to prescribe any positive rule approaching nearer to certainty than the rule of common law, that each shall reasonably use his own right in subordination to the like reasonable use of all others.

With these views of the law regulating the use of public ways, we will examine the present case, as it appears on the exceptions.

We understand that a horse railroad and cars are a modern invention, designed for the carriage of passengers, and though not moving with the speed of steam-cars, yet with the average speed of coaches, omnibuses, and all carriages designed for the conveyance of persons.

The accommodation of travellers, of all who have occasion to use them, at certain rates of fare, is the leading object and public benefit, for which these special modes of using the highway are granted, and not the profit of the proprietors. The profit to the proprietors is a mere mode of compensating them for their outlay of capital in providing and keeping up this public easement.

A franchise for the railroad, which the defendant was accused of obstructing, had been duly granted to the proprietors, which grant included the right to lay down tracks on a a public highway, and also to use and maintain horse-cars thereon for the carriage of passengers.

Every grant, by an obvious and familiar rule of law, carries with it all incidental rights and powers, necessary to the full use and beneficial enjoyment of the grant; and when such grant has for its object the procurement of an easement for the public, the incidental powers must be so construed as most effectually to secure to the public the full enjoyment of such easement.

It appears that the proprietors of the horse rail-road having received a franchise, had laid down a railway track, and had procured horse-cars, with suitable conductors, and were in the actual use of the track. The defendant, with a heavily loaded team,—it does not appear whether an ox team, or a horse team, —was on the public street driving from Charlestown to Boston, with one of his wheels on the railroad track, when the cars came up behind him. The defendant's team was moving at the usual rate for teams of that class, but at a less rate of speed than the cars were in the habit of moving. There was room outside the track for either vehicle to pass the other. When the cars came up, the conductor asked the defendant if he would remove his team from the track; he did not, but continued upon it, at the same rate of speed, several hundred feet, and then turned off.

Several things are here to be observed. The cars could only pass on one precise line. The waggon could deviate to the right or to the left, within the limits of the travelled part of the road. The public by the grant of the franchise had granted the right to move on that precise line, and had given to all passengers the right to be carried on that line at the usual rate of speed at which passengers are carried by horses, subject only to occasional necessary impediments. The cars cannot so move and the passengers cannot be so carried, whilst the waggon moves on the track. No impediment is shown to prevent the waggon from turning out. The waggon, therefore, is, for the time being, an unnecessary obstruction of the public travel, and therefore unlawful.

It is stated among the above-mentioned circumstances in the bill of exceptions, as if the two vehicles were upon an equality in this respect, that there was room on either side for either vehicle to turn out, but this is mere illusion, the waggon could turn out, the cars could not; *ad impossibilia lex non cogit.*

It is said above that it is usual for those in charge of heavy and slow teams to drive them with one wheel on the track, and that they could be driven much more easily in that place than in any other part of the street. This is no justification. Whilst the track was not required for the cars, perhaps the teamster had a right so to use it. But when required for the cars, which could pass in no other mode, he had no legal right to consult his own convenience, to the great inconvenience, the actual injury, of the equal rights of another.

It is no excuse that the defendant did not get upon the track in the first instance with the intention of obstructing the passage of the cars, or that he did not slacken his rate of speed on their approach; it is a nuisance, if, for his own benefit, he violates the rights of others; and if this consists in the violation of a public right, indictment is the appropriate remedy for its vindication and redress. Nor is express malice, a disposition or desire to cause damage to another, as in case of malicious mischief, necessary to the completion of the offence. It is a nuisance if one wilfully seeks and pursues his own private advantage, regardless of the rights of others, and in plain violation of them; it is a wrong done. And as every man must be presumed to intend all necessary, natural and ordinary consequences of his own acts, it is a wilful and intended wrong; it is malice,—a thing done *malo animo*,—in the sense of the law and no other malice need be proved, to show the act to be a nuisance.

If it be said that the obstruction in this case was very slight, that the cars were delayed but a very short time,—the answer is, that this is very true, and the injury may be trifling in itself, but vindicated and justified as it is in the argument, on the ground of right, it tests a principle of very great importance. If the driver of a heavily loaded truck or wagon may, for his personal convenience, use one rail of the track, wilfully, for a few hundred feet, others may use the other rail for the like purpose, and for any distance which suits their convenience. Cars, which at the ordinary speed of horses in carriages would pass a given space in one hour, may be three or four in accomplishing it. Passengers whose business requires them to be at the place of destination at a fixed time, and who expect, and have a right to expect, that it will be reached in that time, may find their business greatly deranged.

Men who, relying on the establishment of horse-cars for their daily passage, have fixed their domicile in one place and their ordinary place of business in another, may find their plans of life thus defeated. Indeed, without pursuing the effect of the right contended for into all its consequences, the establishment of such a principle might esntially impair the value of real estate in many situations.

FRANCE.—The Civil Tribunal was on Monday called on to decide another case relative to the arrest of a foreigner for debt. The Prince of Salm-Salm was on the 27th of March last lodged in the Debtors' Prison, in the Rue de Clichy, for the non-payment of a sum of 865f., due to tailors of the names of Bulsson and Lange; and on the 23rd of April following another man named Cornet lodged a detainer against him for 2,022f., in virtue of two judgment of the Tribunals of Commerce obtained in 1859. Yesterday the Prince called on the Civil Tribunal to order his release, on the ground that the tailors had caused him, as a foreigner, to be arrested "provisionally," as it is called—that is, on a simple declaration that he owed them money—but had neglected within a week after to take proceedings to obtain a definite judgment against him, as required by Art. 15 of the law of 1832, relative to arrests for debt; and on Cornet's claim he also applied to be set at liberty because the judgments which that person had obtained had omitted to say how long, in the event of his not paying he was to be kept in prison,—an omission which he contended to be fatal under the said law. The Tribunal, after hearing arguments, decided that the Prince must be set at liberty from the tailor's arrest, but that his other demand could not be granted, a law of 1848 having modified that of 1832 with regard to the point raised.

Metropolitan and Provincial Law Association.

ON THE DEFECTS OF OUR JURY SYSTEM.

The following paper was read at a meeting of the Newcastle meeting of this association by Mr. THOMAS GEORGE GIBSON.

The substance of the paper was prepared for the meeting of this society held last October, but a press of other matter prevented its being then read.

The delay is not altogether regretted by the writer, as the publication in the early part of this year of the third report of her Majesty's commissioners for inquiring into the process, &c., of the superior courts of common law, encourages him to direct attention to the subject with a degree of confidence which was before wanting on his part.

It will be generally admitted that a feeling widely prevails that the practical results of our jury system do not entirely harmonise with the expectations which a consideration of the theory would seem to justify. So strongly, indeed, has this been felt in some quarters, that the institution of "trial by jury" has more than once of late years been called upon for its defence.

The common law commissioners entered very elaborately into this general question in their second report presented in 1853. The conclusion they arrived at is expressed as follows:—

"While, however, we feel that there are cases in which a jury may be dispensed with, yet being of opinion that trial by jury on the whole works well and enjoys the confidence of the public, we do not think ourselves warranted, except in cases of mere account, to recommend that trial by jury should be superseded, unless the parties themselves prefer that the case should be tried by a judge."

This decision, however, was not accepted as final, for in the course of last year a learned gentleman, well-known in the profession and much respected, published his views on "The Dark Side of Trial by Jury," in which he informs his readers that,—

"After long reflection on the numerous and heavy grievances which flow from the unlimited application of this form of trial, he is convinced that it is not adapted to the refinemen of the age we live in, that it has had its day, and it must soon be thrown aside into the huge heap of antique legal lumber, or limited in its application to a very confined class of cases."

This essay has already been ably answered by Mr. Best and Mr. FitzJames Stephens (see Juridical Society's Papers, vol. ii. part iii.), and it is not quoted here out of any sympathy with the author's conclusions, but as evidence of that general feeling of dissatisfaction spoken of above, which the writer believes may be in great measure justified without impugning the institution of "Trial by Jury," or any portion of the law as it at present stands on the subject.

The real defect was well and clearly pointed out in the Common Law Commissioners Second Report already referred to, and the existence of this defect has been admitted in every subsequent defence of the jury system that has come under the writer's notice. The commissioners say on

The Constitution of Juries.

While, however, we are prepared to maintain trial by jury in all cases where facts of a more complicated nature are to be dealt with, we are not blind to the fact that in many instances juries are not so constituted as to insure such an average amount of intelligence as might be desired. A jury of London or Liverpool merchants may be, as we believe them to be, an excellent tribunal to try a commercial cause; or a jury of country gentlemen to try a question relating to a watercouse or the boundaries of an estate; but it must be admitted that in the agricultural districts the common juries are sometimes composed of a class of persons whose intelligence by no means qualifies them for the due discharge of judicial functions. Such persons are unaccustomed to severe intellectual exercises, or to protracted thought, and used to an active out-door life and employment; when shut up for hours in a jury box, bewildered by law terms, by conflicting evidence and the disputations of contending advocates, who appeal to their prejudices, sometimes prononnce verdicts which bring the institution of juries into disrepute; we are of opinion that the standard of qualification of jurymen in the country which is at present as low as a rating on a value of £20 should be raised; and further, that on every trial there should be an admixture of jurymen of the class from which the special juries are now taken. *This is indeed now the law*, though in practice the names of persons qualified to be special jurors are not placed on the common jury panel. There is every reason why jurors of the higher class should assist in the administration of justice to the same extent as those who constitute the common juries. We think the higher class of jurors should bring the assistance of their more cultivated minds and superior intelligence to the decision of cases which, though they may not admit of the general expense attendant under the present system on having a special jury, may not be the less important to the parties whose interests are involved. At the same time it should be understood that we do not propose to abolish the right which now exists of having a special jury as at present appointed. What we recommend is, that the general jury panel should be made up indiscriminately from all persons qualified to serve on either jury. The same commissioners in their third report, published this year, make the following observations on the same subject:—

"We make it right to avail ourselves of this opportunity to invite renewed attention to our former observations respecting the constitution of juries. More especially we would urge the consideration of that part of our recommendations which relates to securing the attendance on common juries of the class of persons who now serve exclusively on special juries with a view to the improvement of the former by the admixture of persons of higher education and intelligence. We are strongly persuaded that a very great improvement would by this means be effected in the constitution of juries, and as we do not propose to do away with the right of parties to resort to a special jury; or to deprive special jurors when serving as such of the additional remuneration which they are in the habit of receiving, we can see no ground why the liability of such persons to serve on common juries, which already exists in law, though it is not so required in practice, should not be enforced."

The object of the present paper is to call attention to the statutable authority for the assertion that special jurors are by law liable to serve on common juries, and to fix the responsibility of the present defective practice upon the undersheriffs; and secondly, to express a hope that inasmuch as these gentlemen are members of our common profession, some means may be devised by this Society at its present meeting to induce these gentlemen to act in future up to the spirit of the law instead of keeping as at present barely within its letter.

The law of jurors is mainly regulated by the Act of 6 Geo. 4, c. 50. By the first section of this statute it is provided:—

"That every man except as hereinafter excepted between the ages of twenty-one years and sixty years, residing in any county in England, who shall have in his own name, or in trust for him within the same county, £10 by the year above reprizes in lands or tenements, of freehold, copyhold, or customary tenure . . . . . or who shall have within the same county, £20 by the year above reprizes in lands or tenements, held by lease or leases for the absolute term of twenty-one years, or some longer term . . . . . or who being a householder shall be rated or assessed to the poor-rate, or to the inhabited house duty in the county of Middlesex, on a value of not less than £30, or in any other county on a value of not less than £20, or who shall occupy a house containing not less than fifteen windows, shall be qualified and *shall be liable* to serve on juries for the trial *of all issues*, joined in any of the King's Court of Record at Westminster, and in the superior courts, both *civil and criminal* of the three counties palatine, and in all courts of assize, *nisi prius*, oyer and terminer, and gaol delivery, such issues being respectively triable in the county in which every man so qualified respectively shall reside; and shall also be qualified and liable to serve on grand juries in courts of sessions of the peace, and on petty juries for the trial of all issues joined in such courts of sessions of the peace, and triable in the county, riding, or division in which every man so qualified respectively shall reside."

In Wales the qualification is one-third lower, but in every other respect the liability is the same.

Section 2 exempts peers, judges, clergymen, ministers, teachers, lawyers, medical men, and a few public officers. Sections 4-11 relate to the preparation of the list of persons qualified and liable to serve on juries. It is provided that the clerks of the peace are to issue their process to the high constables, by which the former are to command the latter to issue their precepts to the churchwardens and overseers of the poor requiring them to prepare and make out the lists; the churchwardens and overseers for their assistance in the preparation of the lists are given liberty to inspect the tax-assessments; after allowance by the justices, the lists are to be received by the high constables, and delivered by them to the courts of quarter sessions. Section 12 provides—

"That the clerk of the peace shall keep the lists so returned by the high constable to the Court of Quarter Sessions . . . and shall cause the same to be fairly and truly copied in a book to be provided for that purpose . . . . and shall deliver the same book to the sheriff of the county or his undersheriff . . . . which book shall be called the 'Jurors Book for year ——' (inserting the calendar year for which such book is to be in use), and that every sheriff on quitting his office shall deliver the same to the succeeding sheriff, and that every juror's book so prepared shall be brought into use on the 1st day of January after it shall be so delivered by the clerk of the peace to the sheriff or his undersheriff, and shall be used for one year then next following."

Section 14 provides that every sheriff upon the receipt of every writ of *venire facias*, and precept for the return of jurors, shall return the names of men in the juror's book for the current year and no others.

Section 30 provides that the courts may order special juries to be struck.

Section 31 provides "That every man who shall be described in the juror's book for any county in England, Wales, or for the county of the city of London, as an esquire or person of higher degree, or as a banker or merchant shall be qualified and liable to serve on special juries in every such county in England and Wales, and in London respectively, and the sheriff of every county in England and Wales, or his undersheriff, and the sheriffs of London, or their secondary, shall within ten days after the delivery of the juror's book for the current year to either of them take from such book the names of all men who shall be described therein as esquires or persons of higher degree, or as bankers or merchants, and shall respectively cause the names of all such men to be fairly and truly copied out in alphabetical order, together with their respective places of abode, and additions in a separate list to be subjoined to the juror's books, which list shall be called 'The Special Juror's List.'"

Section 35 provides "That no juror who shall serve upon any special jury shall be allowed to take for serving on any such jury more than such sum of money as the judge who tries the issue shall think just and reasonable, and which shall not exceed the sum of £1 1*s.*, except in cases wherein a view is directed."

This being the state of the law, let us now consider how it is commonly applied by the undersheriffs in the execution of precepts for the return of jurors.

The general, if not universal practice in this respect is, and has been for many years, to summon the persons on the "Special Jurors List" only for the trial of issues of an exceptional and special nature, to wit, the issues raised in what are called "special jury actions." By this arrangement, the common jury, which, by a recent writer is said to dispose of nine-tenths of the trials, civil and criminal, which occupy the courts of law, is drawn exclusively from a class of persons to whom no injustice can be done in saying that it comprises the least elevated and least educated portion of the whole body of qualified jurors.

The provision of the statute is that all the persons in the jurors' book are to be liable to serve on juries for the trial of *all issues*, but in point of fact the only persons who are summoned for the trial of all issues (that is to say, all kinds of issues) are the residue of those names contained in the jurors' book after striking out all the persons qualified to be on the special jurors' list.

The practice in question is not contrary to the letter of the statute, for it only directs the sheriff (sec. 14) to return as jurors the names of men in the jurors' book and no others; and it leaves him a wide discretion as to the selection of jurors within this limit. But it can scarcely be doubted by any one who will read the statute that it was the intention of the legislature to lay the burden of trying in general language all issues upon the general list of persons constituting the jurors' book, and to impose by way of additional duty upon the higher and better educated class, including esquires and persons of higher degree, merchants and bankers, the further task of trying by themselves the more difficult and complex cases.

This is strongly borne out by the nature of the section in the Act, authorizing the payment of special jurors; in fact, the only rational ground on which this provision can be supported consistently with the nonpayment if the common jury, is that every qualified person, without exception, is supposed to take an equal amount of duty upon the common jury; but that the special jury service was intended to be an extra and additional duty performed by a few. Under any other aspect the payment of the special jury, at the same time as you compel the common jury to serve gratuitously, is at once illogical and unjust, while with this key it may be at once reconciled with both reason and justice.

It would be neither difficult nor uninstructive to trace the effects on the administration of justice which *à priori* considerations might lead us to expect from a system which should throw an overwhelming amount of influence into the hands of any one class of the community, and to compare these results with the objections commonly urged against trial by jury. But to do so would be foreign to the object now in view, which is simply to draw attention to the law as it stands, and the mode in which it is commonly carried out.

The authority of the Common Law Commissioners, four of whom are judges now on the bench, must be taken as conclusively establishing that the present practice is erroneous and objectionable, and there can be very little doubt that it is doomed, and will be altered by authority, if not voluntarily amended by the under sheriffs.

We all profess to be law reformers, and our first duties in law reform, as in all reform, must concern ourselves rather than our neighbours.

It is not often that we, as a profession, have the opportunity of effecting any general legal improvements by our own unaided efforts. Such, however, is really the case in the present instance. The defect pointed out by the commissioners is not in the law but in the practice of the undersheriffs, members of our common profession. And the writer submits, in conclusion, that it is a defect peculiarly within the province of this meeting to discuss with a view to the initiation of some amendment.

The National Association for the Promotion of Social Science.

ON THE APPELLATE JURISDICTION OF THE HOUSE OF LORDS.

A paper on this subject by Mr. JAMES ANDERSON, Q.C., was read by that learned gentleman in the Jurisprudence department of the recent Congress at Glasgow. After an historical sketch of the Appellate Tribunal of the Scottish Parliament before the Union, Mr. Anderson proceeded to consider the improvements which might still be made in the present tribunal of ultimate appeal in Scotch cases, as follows:—

1. The chief objection to its *constitution* is, that it is deficient in permanent judicial strength. The only member whose duty it is to attend is the Lord Chancellor for the time. There may be no other law lords who can attend, or, if there be, their attendance is voluntary, and this is highly objectionable. There ought to be a permanent judicial bench. Each Chancellor should, on taking the seals, be elected a member of this bench. He should remain, notwithstanding he might cease to be Chancellor; and if there were not ex-Chancellors enough to form, with the Lord Chancellor, a Court of at least five, competent persons should be appointed so as to secure always that number.

2. The *forms of procedure* might be materially simplified. Among other things—

(1.) The petition of appeal and the answer of the respondent should be dispensed with. They are entirely useless. Instead of the petition, the party aggrieved by any judgment should be enabled to appeal by lodging with the Clerk of Parliament a printed copy of the record and proceedings, including the judgment complained of, and by serving on the opposite party a notice that he had done so. On a certificate that this notice had been served on the respondent, the appeal should be set down for hearing,—neither party being obliged to lodge any appeal case.

(2.) The House ought to meet for judicial business when necessary, notwithstanding that Parliament was at the time prorogued or not sitting.

(3.) The notice of appeal should not operate as a stay of execution for more than a limited time—say fourteen days—unless ordered by the Court.

(4.) Incidental questions, when they arise, should be disposed of by motion on notice, instead of by the present expensive and tardy system of petition; and these motions ought to be disposed of at once, either in chambers or at the bar, of the house, instead of being detained for months until an appeal committee is convened, as incidental petitions now are.

(5.) All house dues should be abolished. At present a tax is levied on every step that is taken in an appeal cause—very burdensome to the individual suitor, and productive of very little revenue.

But an important question remains. Can any element be introduced to secure a better knowledge of the law of Scotland in disposing of appeals? Many schemes have been suggested for accomplishing this object.

First, It has been proposed to establish in Scotland an intermediate court of review, so that parties might have the benefit of a deliberate judgment of this intermediate court before incurring the expense of an appeal to the lords. I cannot help thinking that there are already too many intermediate courts—that it is wrong in principle to give parties so many opportunities of having their causes heard and reheard. The court would be more efficient, and more respected if its decisions were conclusive between the parties, subject only to an appeal to the last resort; and I think that either party should be entitled, as soon as the record was closed, to remove it into the Inner House for judgment; and if this were not done, but the judgment of the Lord Ordinary taken, that the unsuccessful party should be at liberty to appeal at once to the House of Lords, as a suitor may in the Court of Chancery from a decree of a Vice-Chancellor without going to the Court of Appeal in Chancery. This would save both time and expense. A judgment of the House of Lords would be obtained as soon as a judgment of the Inner House on a reclaiming note. There is no reason why an appeal to the House of Lords should not be disposed of within three months, during session, after the notice of appeal, which I have suggested, is given.

Second, Another scheme is that a court of last resort should be instituted in Scotland, the jurisdiction being altogether removed from the House of Lords. This project was discussed at the Union, and found favour with many of the commissioners, and so late as 1823, the minister of the day—the Earl of Liverpool—was prepared to bring in a measure for carrying it into effect, and he had the support of a noble lord connected with Scotland, the Earl of Aberdeen. The immediate occasion which led to this measure, was the disproportionate number of appeals from Scotland, which were not unjustly regarded as the main cause of the arrears, not only in the House of Lords, but also in the Court of Chancery. According to returns presented to Parliament, it appeared that, for many years previous to 1823, the average number of appeals each session from England was 5, from Ireland between 8 and 9, and from Scotland 40; in other words, about 75 per cent. of the whole appellate business was from Scotland. A temporary remedy was at that time applied, viz., the appointment of a deputy speaker, Lord Gifford, to dispose of the arrears of Scotch appeals, and the general measure was postponed. Public opinion was opposed to it, and it was justly consigned to oblivion.

A court of last resort to be effective must be the supreme power of the State. No attempt to establish a special tribunal inferior to this power has ever been successful; and the Court of Session, previous to the union, which, in effect, was a court of last resort, is not an exception to the contrary. Probably history does not disclose a more tyrannical, or a more servile and corrupt, tribunal than the Court of Session of 1675, after it had established its claim to supremacy.

The uses of a court of last resort are threefold—1. To decide the particular controversy, so that justice may be done between the parties: 2. To expound the legal principles involved in the cause, so that the law may be rendered clear and certain, and sound precedents established for the decision of future questions. And, in this respect, no one has contributed more to illustrate and enrich the law of his country than the noble and learned president of this Association: 3. But the indirect, though not less important, use of an appeal court consists in the moral influence it has in checking and controlling inferior judges in the administration of their office. The more exalted in rank and dignity, and the higher in power and authority the Appellate Court is, the greater will be this moral influence.

Third. But suggestions have been made for retaining the jurisdiction of the House of Lords, and improving it by the introduction, in various ways, of Scottish lawyers.

(1.) It has been proposed that the Scotch judges should be summoned and be present at the hearing of Scotch appeals, as the English judges are on writs of error. They would have neither vote nor voice in the disposal of the cause, but would merely deliver their opinions, which might or might not be followed. I think that this scheme is in many respects objectionable, and that the precedent of the English judges is unsound and ought not to be followed. The House has ample facilities for obtaining the opinions of the Scotch judges, by remit, when thought necessary.

(2.) A proposal has been made that two Scotch judges in rotation should attend, during each session, to inform the House on points of Scotch law, as they might arise; and this scheme received the sanction of a committee of the House of Lords about the year 1813. (See *Andrew* v. *Murdoch*, 2 Dow 425.) Nothing could be more unsatisfactory than this system of rotation. The Scotch judges, when they were becoming familiarized with their position, would be relieved from attendance, and fresh minds introduced.

But, irrespective of this consideration, what effect was the opinion of these judges to receive? Was the House to adopt the opinion implicitly, or was it to exercise its own judgment, and act upon the opinion, or reject it, as the House thought right? If the latter course was to be followed, every non-adoption of the opinion would be a censure on the judges as advisers. If the former, the judgment would be the judgment not of the House, but of the two Scotch judges as assessors. The House would merely record their assessors' judgment, and it would be respected according to the degree of respect in which the two judges for the time being were held. Again, what was to be done where the two judges differed in opinion with each other?

(3.) Another modification of this scheme is to have one permanent assessor, who should be detached altogether from the Court of Session. This course is open to the most formidable of the objections last considered. There would indeed be permanency, and no danger of division of opinion; but, on the other hand, the confidence which the public had in the tribunal would altogether depend on the confidence the public reposed in the assessor.

Fourth. There remains for consideration a proposal, which has had the largest amount of support from those who think that a Scotch lawyer should be introduced into the House, viz., that a peerage should be conferred on one who, besides his eminence as a Scotch lawyer, had displayed judicial qualities on the bench, and that this judge should be present on the hearing of all Scotch appeals. It is not suggested that he should sit alone, or that the attendance of the Lord Chancellor or the other law lords should be dispensed with. On the contrary, it is allowed that the House, even as now constituted, with all its imperfections, or supposed imperfections, would form a better court of review than a single Scotch judge, or any number of Scotch judges, sitting either in London or Edinburgh. But what is maintained is, that, by the addition of this Scotch judge, the tribunal would be improved, that the other members of the House would be well informed of any peculiarities in Scotch law which might arise in any given cause, and that much time and labour would thus be saved.

Would this really "improve" the tribunal? Very much the reverse, and it would be no less damaging to the Court below. It would introduce into it a disturbing element. The mind of a judge ought to be perfectly even and calm—free from all external influences, whether for favour or for fear. His office should not only be independent, but permanent and stationary. He should consider himself as having reached the goal of all his aspirations—the zenith of his ambition—having nothing to dread, and nothing to hope for, from the crown or the government.

But this could not be, if he were eligible for promotion to an exalted place, not merely of judicial rank and dignity, but of political power and influence. What a temptation would be thrown out, to the whole bench, so to act as to ingratiate themselves, politically and otherwise, with the minister of the day, and what a temptation to the minister, to select, for this promotion, the judge who should sympathise most with him in political feeling, and who would be most useful as a partizan, irrespective altogether of professional acquirements, or judicial qualifications.

It is contended, however, that much time and labour would be saved. Now it is undoubtedly a feature in the hearing of Scotch appeals, that much more time is occupied and labour undergone than in the hearing of English or Irish appeals, or of the same causes in the Court of Session. Is this time wasted? Is this labour thrown away? Would it be any benefit to the suitor or to the law, if it were avoided or saved? It might indeed be a relief to the law lords. For, to their credit be it spoken, they have not hitherto shrunk from the toil and trouble they found necessary for acquiring a thorough apprehension of a case, however technical. It is worth while to dwell a litt on this feature which it is now proposed to obliterate.

Mr. Anderson then referred to the opinions of Lord Hardwick, Lord Eldon, and Lord St Leonards, and continued:—

By the scheme under consideration, the law Lords are to be relieved of all this fatiguing labour, and in lieu thereof, they are to be "informed" of the technical rules of Scotch law by a judge from Scotland. Will this be as satisfactory to the country? Will public confidence in the tribunal be increased?

Again, would time be saved? If the hearing be properly conducted, the advocate must address himself to the least informed of his audience, if he wishes to carry them all along with him. The same inductive method, of investigating Scotch peculiarities, must be continued for the Lords other than the Scotch judge; and how is he to be placed on a level with them in matters in which they are his superiors? The house is an Imperial Tribunal, dealing with Scotch and English law alike as matter of law. How is the Scotch Judge, who has been taught to regard English law as fact, to become master of an English point, when it arises, in mixed questions, which are not unfrequent, or when he sits with his colleagues on English or Irish appeals? Again, would any amount of time compensate for the disadvantage he labours under from the want of that practical training in comparative jurisprudence, which his colleagues enjoyed before their elevation?

There is indeed a danger. Where a tribunal consists of more judges than one, there is always a risk of divided responsibility, even where all are placed on a footing. But where one of the number is specially appointed, by reason of some peculiar acquirement, the shifting upon that member the whole responsibility is inevitable. Let it be assumed, according to the conditions of our argument, that a jury of merchants was a fitter tribunal, for enquiring into a disputed question of chemical science, than a jury of chemists. They would, by time and labour, acquire a knowledge of the technicalities of the question, and be possessed of all the materials necessary for a decision, and the verdict would be their verdict. But suppose a chemist were to be added to this jury, in order to explain to his fellow jurors the mysteries of chemical science, time and trouble might indeed be saved; but whose would the verdict be?

Just so in questions of recondite Scotch law; and the higher the reputation of the Scotch Lord for learning, the greater would be the danger. He would consider elementary, explanations proper and necessary for the other law Lords to enable them, step by step, to form conclusions for themselves. He could not fail to indicate his impatience, and the other Lords would, in spite of themselves, avoid the labour which their colleague did not require, and would take from him, whether right or wrong, the results at which he had arrived. Their presence might be dispensed with, and the Scotch law Lord might sit alone in the House, or, what would be better, he might sit in Edinburgh, for he would not have occupation enough in London to fill up his time, or to keep up his familiarity with the law of Scotland. Better at once to declare the judgments of the Court of Session to be final and conclusive.

Further, assuming that there was no undue deferring, suppose that the law Lords should form an opinion of their own, opposite to that expressed by the Scotch judge, would it not be considered that the judgment proceeded on English notions, and was opposed to the law of Scotland, as expressed by the Scottish authority placed there for the purpose of expounding that law?

It was at one time in contemplation to confer a peerage on the late Lord Corehouse, with the view of his assisting in the hearing of Scotch appeals. Probably no person in modern time was more eminently qualified for the judicial office—an accomplished scholar, a profound lawyer, having, in the highest degree, the quality of judicial discrimination, the faculty of seizing at once the strong points of an argument. The opinion of this sound thinking man on such a question is of the greatest value, and we are fortunately in possession of it. Sir John Romilly, in his evidence before the Appellate Jurisdiction Committee of the House of Lords in 1856, informs us:—"I remember his (Lord Corehouse) telling me that he thought nothing had been more advantageous to the law of Scotland than the fact that, since the time of Queen Anne, there had been an appeal to the House of Lords; that it had exercised a most beneficial influence. I asked him whether it would not have been better if there had been a Scotch lawyer in the Court of Appeal? He said no; he was of opinion that it would have been worse. I remember distinctly his stating to me his view, that the effect produced by the Appellate Jurisdiction of the House of Lords, had been most beneficial with respect to the administration of the law of Scotland.—*Report, p.* 161.

Is there, then, no other way of infusing into the tribunal a better knowledge of Scotch law? What is the cause of the ignorance which is said to prevail? It is that the members of the tribunal have not been educated in the law of Scotland. Why should this cause not be removed?

I think the time has come when English law should cease to be regarded in Scotland, and Scotch law in England, as foreign law, to be proved like any matter of fact. When one considers the great and growing intercourse, social and commercial, of the two countries, the ties by which the people are bound together, it is perfectly unaccountable how the present system should have been tolerated so long. No English law is taught in your schools in Scotland, nor Scotch in England. The law of Scotland is a sealed book to the English, and the law in England to the Scotch lawyer. Nay more, ignorance of the law of the sister kingdom is positively encouraged and inculcated by both systems. It is the duty of an English lawyer, when he meets with a Scotch point, in advising a client, to abstain from meddling with it, and the same duty is incumbent on the Scotch lawyer in reference to points of English law.

In like manner, if we except the Appellate Tribunals, judges in the courts of both countries scrupulously avoid dealing, each with the law of the other. They require only results to be verified, and any knowledge of the law, thus thrust upon them, is got merely with a view to the disposal of a particular question, and is discharged from the mind and memory as soon as that question is disposed of. The consequence is that the mind of the lawyer runs in one groove—that of the municipal law of his own country. Whereas, if there were an education in both systems—if the Scotch lawyer were educated in the knowledge of English law, and had to inquire into it, when it arose, according to principle and authority, he would acquire the more liberal views which are imparted by the study of comparative jurisprudence; and the English lawyer, when he was engaged in appeals from Scotland, would have more confidence in himself. He would be guided in his preparation by the systematic knowledge he had acquired, and, ultimately, the Appellate Tribunal would consist of members entirely free from the imputation of having had no education, and no experience, in the law of Scotland, before their elevation to their high office.

And what reasonable objection can there be to the education of the English lawyer in Scotch law, and the Scotch in English. It has been said that it would tend to confound the principles and confuse the boundaries of the two systems. If by this is meant that there would be a progressive assimulation, it does not strike me that the confusion would be much to be lamented. And there can be no doubt that the differences and contrasts of the two laws are aggravated and prolonged, by the ignorancy, of lawyers, reciprocally, of the laws of the sister kingdom. Nor would there be any danger of the Scotch law being merged into the English. On the contrary, I think that there would be a larger adoption of Scotch law in England, than of English law in Scotland; for in many respects the law of Scotland is more simple, and more logical, than the law of England.

But the objection appears groundless in fact. There will be no difficulty in preserving the boundaries of the two laws, or in distinguishing between their respective rules and principles. As well may it be said that a geographer should be confined to the study of only one of the hemispheres, in case he might confound the Alps with the Andes, or Lake Superior with the Lake of Geneva.

The course of modern legislation has tended to aggravate this mischief. By a recent Act of Parliament, the Scotch Court is enabled to refer for the decision of a Court in England, any question of English law arising before it, and vice versa an English Court may take the same course for the decision of a point of Scotch law. This is undoubtedly an improvement on the old system of examining lawyers as witnesses, assuming always that the law, to be inquired into, is to be regarded as foreign, or as matter of fact. But it is an alteration in the wrong direction. It removes further from the Bench and Bar of either country a knowledge of the law of the other. Under the former system, when there was conflicting testimony of lawyers, the reasons of their opinion, and the authorities by which these were supported, were given, and became evidence, and the investigation of these reasons and authorities led the judge to enquire for himself what was a right decision according to principle and authority. The masterly judgment of Lord Stowell, in Dalrymple *v.* Dalrymple, is a stricking instance in point. Although it be merely the conclusions deducible from a body of evidence, yet nowhere is there to be found a more lucid exposition of the

principles, or more accurate examination of the authorities, of the law of Scotland as to the constitution of the marriage contract.

I have thrown out these suggestions in the hope that such improvements may be effected, in the constitution of the tribunal, and its procedure, as will secure to it, the three great properties —the cardinal virtues of a Court of Justice—certainty of decision, simplicity, cheapness, and render it, if not perfect as an institution, of least worthy of being the last resort in the administration of that law, whose greatest glory is, that it is no respecter of persons—that while the mightiest are not beyond its power, the meanest are not beneath its protection.

BELLIGERENT RIGHTS OVER PRIVATE PROPERTY AT SEA.

A paper on the above subject was read at the Glasgow meeting of this Association, by Mr. W. J. LAMPORT.

The declaration of the congress of Paris in 1856, to the effect that "the flag shall cover the cargo," or, in other words, that an enemy's property shall be held free from capture when carried in a neutral ship, excited little attention at the time; or, so far as it excited attention, was regarded as a step forward in civilization.

But an unsuspected, though when once pointed out extremely obvious consequence has since been perceived to follow from it.

No sooner did disturbances in continental politics make it possible that England might be entangled in war, than it became evident that British ships were henceforth at a disadvantage in competition with ships sailing under the flags of countries not expected to be drawn into hostilities. Merchants in foreign and colonial ports, where a choice of flags could be made, immediately avoided British ships, and gave their cargoes to ships of other nations, influenced by the immunity from capture enjoyed in the neutral ship compared with the liability to capture in the British ship. Instances were even known in which American ships were chartered in England by English merchants to bring cargoes home from ports in British India at rates of freight double those obtainable for British ships at the same time.

Temporary loss thus flung upon British shipowners opened their eyes to the still more serious prostration and ruin which they may have to encounter when war actually breaks out.

The question might at first sight seem to be one for the shipowner only. But, once stirred, the commercial and monetary interests all over the country became suddenly roused to an identity of danger; and merchants and bankers both at home and in the colonies made common cause with shipowners.

Memorials and deputations to the Government followed. It was hopeless, were it desirable, to undo what the congress of Paris had done, and the prayer was, that yet another step forward might be taken, and that at the then shortly expected congress of the great powers, the representative of this country might be instructed by her Majesty's Government to support a proposition to the effect that ships and their cargoes, not being contraband of war, shall hereafter be held altogether free from capture, except when attempting to break a blockade.

The press, with a marked and powerful exception, has for the most part pronounced in favour of this proposition. The late select committee of commons on merchant shipping has reported in a sense favourable to the same side of the question. And, significantly enough, some of the loudest cries in its favour have come from mercantile bodies in foreign countries whose shipowners might have been expected to seek their interest in the maintenance of the existing state of the law.

I attempt simply to place before the section a sketch of the present state of the discussion. I pretend to no originality of statement or argument.

The following tabular statement is intended to show the legal position of merchant ships and cargoes, the property of subjects of belligerent states, not contraband of war, nor attempting to break a blockade, under three different states of the law:—

1. Under the law as it stood before the Paris declaration of 1856.

2. Under the law as it stands altered by the Paris declaration.

3. Under the law as it will stand, when, by the further alteration now sought for, such ships and cargoes shall be held free from capture.

1. (PAST).	2. (PRESENT).	3. (FUTURE.)
Ships and cargoes were liable to capture under any flag.	Ships are liable to capture. Cargoes are liable to capture under a belligerent flag, but free from capture under a neutral flag.	Ships and cargoes will be free from capture.

GENERAL RESULTS AS TO SHIPS.

Ships of the most powerful naval belligerent sailed under convoy. Ships of the least powerful naval belligerent were laid up in port in order to avoid almost certain capture.	Ships of both belligerents are laid up in port.	Ships of both belligerents will traverse the seas unmolested.

GENERAL RESULTS AS TO CARGOES.

Cargoes were carried in belligerent and in neutral ships almost indifferently, as in time of peace, so far as they could be carried at all. But the sea commerce of the least powerful belligerent was almost extinguished.	Cargoes are carried in neutral ships.	Cargoes will be carried in belligerent and in neutral ships almost indifferently, as in time of peace.

Looking, then, at the probable results of a war from our own point of view, as being that of the belligerent possessing at once the most powerful war navy and the largest mercantile marine, it would seem that the effect of the declaration of 1856 has been—1st. To deprive England of the superiority which her more powerful war navy would otherwise give her in protecting her own sea commerce and in destroying the sea commerce of her less powerful enemy—and, 2nd. To deprive her shipowners of the use of their ships, and her commercial and consuming population of the benefit of the competition of those ships with neutrals; thus depriving England of the vantage ground she occupied in former wars, and reducing her in these respects to the level of any inferior opponent.

On the other hand, if private property at sea be altogether secured against capture, the effect (and so far as I know the only positive and proximate effect) will be, that the legitimate commerce of belligerents, when not interrupted by blockade, may be carried on in belligerent as well as in neutral ships, and that the merchant seamen of belligerents may be employed on board merchant ships under their respective national flags, instead of on board neutral merchant ships, or in their respective war navies. England will thus recover the advantages derivable from her larger mercantile marine, while her manufacturing and consuming interests will still retain all advantages in respect of uninterrupted commerce already conferred on them by the Paris declaration. The power given her in former wars by her more powerful war navy to annihilate the commerce of her enemy will, it is true, continue to be lost to her. That power was deliberately parted with in 1856, and cannot now be recalled.

I contend, then, that of all nations England suffers and will suffer most from the present state of international law on this subject, and will derive most benefit from the perfect immunity of floating private property from capture.

Yet we have been told, on authority heavy with the weight of eminent names, that England is vitally concerned in the maintenance of the present state of the law; and that to change it in the sense proposed will be to abandon our power to inflict disaster on the commerce of our enemies. The arguments brought forward in opposition to the change, so far as I have been able to apprehend them, are the following :—

1. The object in war is to injure an enemy. So far as we give up the power to do this, so far we cripple ourselves.

I reply, that the power proposed to be given up in this case is no longer worth retaining. The power to injure an enemy in respect of floating property was virtually given up in 1856, save in so far as the enemy's merchant ships may be surprised at sea by the outbreak of war, and captured before they can get into port. Ships and cargoes found thus floating, once disposed of by capture, destruction, or escape, the merchant ships of the belligerents will thenceforward lie safe in port, while their cargoes will be carried with immunity under neutral flags.

The right proposed to be abandoned is consequently a merely nominal right. On the other hand, let the change now advocated be made, and our naval preponderance, with the right of blockade, will still enable us to exclude or to shut up the enemy's merchant ships from or in the enemy's ports, while our own merchant ships can traverse the seas unmolested. Even the temporary destruction of property when war first breaks out will inflict on England more loss than she can inflict on an enemy. She has interests afloat larger than those of any other nation, and these will be exposed to the ravages of steam cruisers, against which no preponderance of naval power can effectually guard.

This is a mercantile and ship-owning question. The trading classes must be content to suffer for the benefit of the whole community.

It remains to be shown how the community will benefit by this loss to the trading classes; or how the community can escape when the trading classes suffer.

3. Private property found on land by an invading army is not thus respected.

In all recent European conflicts, private property has been respected on land, except in so far as it may have been required to supply the immediate necessities of an invading army. We never hear of prize-money derived by the soldiers of an army from the confiscation of private property.

4. Our naval officers and seamen must have the prospect of prize-money to stimulate them to exertion.

Our army require no such stimulus. Moreover, the declaration of Paris has already taken away the prospect of prize-money from our navy, except in respect of captures made of ships surprised by the outbreak of war.

5. The compulsory inactivity of British merchant ships will throw a much needed supply of seamen into the British war navy.

The enormously high freights which neutral shipowners will earn by the sudden withdrawal of the whole British mercantile marine from competition in the carrying trade, and the inability of neutral nations all at once to supply native crews for the extra tonnage called into existence by this demand for neutral ships, will enable and induce neutral shipowners to bid successfully against the British war navy for the services of British merchant seamen. America will probably supply the largest amount of neutral tonnage, and owing to identity of language and habits, British seamen are more likely than Continental seamen to be absorbed into American ships. The British navy is more dependent on a mercantile marine for a continuous supply of seamen than is the navy of any continental power, and will suffer more from an interruption of that supply; especially as this interruption will be lasting, inasmuch as boys will cease to be trained for the British merchant service when all British ships are laid up in port.

6. The continental powers will not agree to alter the law.

In a message to the United States' Congress in 1856, President Pierce stated that the Emperor of Russia entirely and explicitly approved of a proposition that private property on the high seas shall be exempt from seizure; and that similar assurances had been received of the disposition of the Emperor of the French. Austria is interested in the change by her large mercantile marine compared with her small war navy. The disposition of Prussia is probably indicated by favourable opinions already expressed in other parts of Germany.

7. America will never agree.

This very proposition was formally made by America in 1856, though it was afterwards withdrawn. But the concurrence of America is not important, except in the case of war with America, a contingency in the highest degree improbable.

8. An agreement so made at an European congress will not be kept when war breaks out.

Then why enter into the agreement involved in the Paris declaration of 1856? The same declaration abolished privateering.

I have not yet met with any reasonings on the opposite side which cannot be resolved into one or other of these arguments. I may possibly hear others more convincing to-day. If not, I earnestly commend to the consideration of the association the proposition "that ships and their cargoes, not contraband of war, shall hereafter be held free from capture, except when attempting to break a blockade." The prospect of an early European congress has for the present passed away. But so has the apprehension of immediate war. Time and calm are thus afforded for a complete and temperate discussion of the subject.

Reviews.

A Treatise on the Law of Marriage, and other Family Settlements, with Precedents and Practical Notes. By JAMES PEARSE PEACHEY, of the Inner Temple, Esq., Barrister-at-Law. London: H. Sweet. 1860.

A new work on the law of marriage and family settlements has been long demanded by the profession. The long promised volume on that subject in the Jarman and Bythewood series, still, as far as we know, exists only in promise, and it appears now to be doubtful whether it will ever become an actual existence. Mr. Peachey, therefore, in undertaking a task of great magnitude and importance, had the satisfaction of knowing that its accomplishment was a professional desideratum. The amount of the labour involved may be conceived from the fact that Mr. Peachey's book contains more than 1000 pages, of which 648 are devoted to the treatise, the remainder consisting of precedents and an index. We can hardly pretend, with justice to the author, to offer any detailed criticism of such a work, and shall therefore content ourselves with giving some account of its general plan and scheme. Starting with a slight sketch of the origin of settlements of real estate, Mr. Peachey proceeds to consider the restrictions upon the general capacity to make settlements, and the validity of settlements of real and personal estate when made by infants. He then treats of marriage agreements, and of the Statute of Frauds, and fraud and misrepresentation generally, as affecting them. From marriage agreements he goes on naturally to the subject of settlements pursuant to marriage articles, and executory trusts and wills. Next we have a chapter on settlements in derogation of marital rights, followed by one on the equity of a wife to a settlement. Then comes a chapter on settlements as affected by the 13 Eliz. c. 5, and by the bankrupt laws, followed by one on settlements as affected by 27 Eliz. c. 4. These include the whole subject of fraudulent preference and voluntary conveyances. The subjects of the wife's separate use, and of pin money, finish what appears to be the first part of Mr. Peachey's general division, and may be considered in some sense as introductory to the actual work of a conveyancer in drawing marriage settlements. That being so, having thus led up to the actual draft, Mr. Peachey next shapes his course by its requirements; and we have accordingly chapters on limitations, powers to jointure, portions, and on the covenants usually found in such deeds. Proceeding upon this plan, having said all that he had to say upon the subject involved in the draft itself, he proceeds to the subjects of the rectification of settlements, and of family arrangements and resettlements; and fitly enough, especially according to modern experience, winds up his entire treatise on marriage settlements by a chapter on deeds of separation. If we selected any part of this very elaborate treatise as being most creditable to Mr. Peachey—which assuredly the entire work is—we should especially mention the chapters on Portions and on Double Portions, which are extremely well done; and as original contributions will be very acceptable to lawyers.

The precedents are, perhaps, not the least valuable portion of the book; they are carefully selected, and have been framed with regard to the many recent alterations of the law affecting settlements.

There are throughout the work very abundant evidences of the laborious industry and care of the author; and the reported cases appear to have been noted by him down to the date of publication.

A Manual of the Statutes of Limitation, showing the time within which the ownership of property must be asserted and exercised, or actions or suits commenced, to prevent the operation of these statutes, viz., barring, the remedy for obtaining, or extinguishing the right to such property. By

James Walter, Esq., Solicitor, and Member of the Incorporated Law Society. Shaw and Sons, London, 1860.

This very useful manual is accompanied by a chart or table of statutes which may be hung up in an office, and will be found extremely convenient for reference. Mr. Walter's observations on the various statutes are those of a thoughtful and sensible practitioner, and are always pertinent.

The Act to further amend the Law of Property (23 & 24 *Vict. c.* 38) *with introductions and practical notes, and with further notes on* 22 & 23 *Vict. c.* 35. By Sylvester Joseph Hunter, of Trinity College, Cambridge; and of Lincoln's-inn, Esq., Barrister-at-law. Butterworths. 1860.

Mr. Hunter is already well known to the profession, as the author of an edition of Lord St. Leonards' Law of Property Act, 1859, and of several other useful works.

The brochure now before us contains an edition of Lord St. Leonards' Act of last session, with explanatory observations and references to authorities bearing upon the points under consideration.

Obituary.

WALTER COULSON, ESQ., Q.C.

This gentleman died on the morning of the 21st instant. He was called to the bar by the Honorable Society of Gray's Inn in November, 1828, but practised chiefly as a conveyancer. Many years since he was appointed Parliamentary Counsel to the Home Office, and in 1851, was appointed one of Her Majesty's Counsel.

Law Students' Journal.

LAW LECTURES AT THE INCORPORATED LAW SOCIETY.

Mr. Frederick John Turner, on Conveyancing, Monday, Dec. 3.

Mr. George Wirgman Hemming, on Equity, Friday, Dec. 7.

Court Papers.

Judicial Committee of the Privy Council.

LIST OF BUSINESS.

Whence.	Appellants.	Respondents.
New Brunswick.	St. Andrews and Quebec Railroad Co.	Brookfield and King.
British Guiana.	Stuart and Others.	Norton.
Bengal.	Sets Luchmeechund Radhakishen.	Sets Zorawur Mull and Others.
"	Anundmohun Pal Chowdry	Kishenchunder Banerjea Chowdry and Others.
Canada.	Martin and Others.	Lee.
Bengal.	Doorgapersaud Roy Chowdry	Tarapersaud Roy Chowdry.
Isle of Man.	Corlett.	Radcliffe and Others.
Bengal.	Arrathoon (on her demise, Gregory, Executor).	Cochrane.
Madras.	Kerakoose.	Brooks, Official Assignee.
High Court of Admiralty.	Elliot and Others.	Dundee, Perth, and London Shipping Company. Ship "Wearmouth."
"	Elliot and Others.	London, Perth, and Dundee Shipping Company. Ship "London."
"	Stevens and Others.	Gourley. Ship "Cleadon."
"	Stevens and Others.	Gourley. Ship "A. H. Stevens."
"	Bland.	Ross. Ship "Julia."
"	North German Lloyd Steam Ship Co.	Elder and Others. Ship "Schwalbe."
"	Kilgour and Others.	Alexander & Others. Ship "East Lothian."
"	Maddox and Others.	Fisher and Others. Ship "Independence."
"	Maddox and Others.	Fisher and Others. Ship "Arthur Gordon."
Arches Court.	Heath.	Burder.

PATENTS.

To fix hearing.

Napier's patent (improvements in smelting ores).
Newton's patent (improvements in letter-press printing).

Chancery Vacation Notice.

The Christmas Vacation will commence on the 24th of December, 1860, and terminate on the 6th of January, 1861, both days inclusive.

Exchequer of Pleas.

NEW CASE.—Michaelmas Term, 1860.

Appeal. Barkworth and Others, Assignees, &c. *v.* Blundell.

Liverpool Winter Assizes, 1860.

The Commission Day is the 11th December.
Causes will be taken on Monday, December 17.
Special Juries on Wednesday, December 19.

Railway Debentures.—A recently published official paper shews the total amount of capital represented by the securities to be £80,628,116. It appears upon comparison of the different rates of interest at which sums are borrowed by the larger and the smaller companies that the humbler borrowers stand in least favour with capitalists,—the smaller companies, as a rule, paying a larger amount of interest.

Births, Marriages, and Deaths.

BIRTHS.

COLES—On Nov. 22, at Eastbourne, the wife of John Henry Compton Coles, Esq., Solicitor, of a daughter.

ELLISON—On Nov. 29, the wife of Thomas Ellison, Esq., Barrister-at-Law, of a daughter.

MARRIAGES.

ANDERTON—SAGAR—On Nov. 22, at Bury, Lancashire, Frederick Anderton, Esq., Solicitor, to Betsey, second daughter of the late William Sagar, Esq.

AUSTER—REIGART—On Oct. 24, at New Orleans, C. L. Auster, Esq., eldest son of C. H. Auster, Esq., Solicitor, of Birmingham, to Sophia E. Reigart, eldest daughter of Henry F. Reigart, Esq., of Baltimore, United States.

CATTELL—UMBERS—On Nov. 29, Christopher William Cattell, Esq., of Devonshire-road, Holloway, Solicitor, to Ann Jaggard, second daughter of the late William Umbers, Esq., of Wappenbury, Warwickshire.

FROST—CARDEN—On Aug. 18, at Bendigo, Australia, Charles Frost, Esq., youngest son of John Frost, Esq., Solicitor, London, to Ann, daughter of John Carden, Esq., of Sandhurst.

ROBERTSON—BUTLER—On Sept. 20, at Hobart-town, John Robertson, Esq., of Colac, Victoria, Australia, eldest son of William Robertson, Esq., of Melrose, to Sarah Martha, only daughter of the late Edward Paine Butler, Esq., Solicitor, of Hobart-town.

DEATHS.

COCK—On Nov. 26, Mr. William Cock, aged 71, upwards of 50 years managing clerk at Messrs. Abbott, Jenkins, and Abbott's, Solicitors, New-inn.

BENNETT—On Nov. 14, at Rolstone, Banwell, Clara, daughter of the late George Bennett, Esq., Solicitor, aged 51 years.

FENTON—On Nov. 25, Alfred, son of the late Perrrot Fenton, Esq., of Doctors'-commons, aged 35.

RICHARDS—On Nov. 27, at Caerynwch, Merionethshire, aged 73, Richard Richards, Esq., late M.P. for the county of Merioneth, eldest and last surviving son of the late Right Hon. Sir Richard Richards, formerly Chief Baron of the Exchequer.

URQUHART—On Nov. 24, at Edinburgh, Adam Urquhart, Esq., Advocate, Sheriff of the County of Wigton.

Unclaimed Stock in the Bank of England.

The Amount of Stock heretofore standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months:—

BURGON, MARY ANN, and ELIZA BURGON, Spinsters, both of Clapham, Surrey, £2 10s. in Consolidated Long Annuities.—Claimed by MARY ANN BURGON and ELIZA BURGON.

CHALONER, JOHN, Vicar of Wirksworth, Trustee to Rev. Robert Greville, of Bonsall, Derbyshire, £61 8s. 10d. Consols.—Claimed by REV. JOHN WILLIAM CHALLONER, Clerk, Administrator de bonis non of the said Rev. John Challoner.

FENDALL, ANNE CATHERINE, wife of Rev. Henry Fendall, of Nunburn-Holme, Pocklington, Yorkshire, £2,885 Consols.—Claimed by Rev. HENRY FENDALL, Clerk, the husband and administrator.

GLYNN, HENRY RICHARD, and ELIZABETH BEGBIE, a Minor, both of Bideford, Devonshire, £151 12s. Reduced Three per Cents.—Claimed by ELIZABETH BEGBIE, now of age, the survivor.

GOODMAN, GEORGE, Gent., of Broomfield Lodge, Lee, Kent, £49 7s. 5d. New Three per Cents.—Claimed by JULIA GOODMAN, Spinster, the administratrix with the will annexed.

GOTOBED, WILLIAM, Gent., of Portland-street, Cavendish-square, and MARIA CROWFOOT, of Charles-street, a Minor, £99 9s. 11d. Consols.—Claimed by ADEL CROWFOOT, the administrator of Maria Crowfoot, who was the survivor.

English Funds and Railway Stock

(Last Official Quotation during the week ending Friday evening.)

	ENGLISH FUNDS.	
	Bank Stock	..
	3 per Cent. Red. Ann.	91⅞
	3 per Cent. Cons. Ann.	93⅜
	New 3 per Cent. Ann.	92
	New 2½ per Cent. Ann.	..
	Consols for account	93⅜
	India Debentures, 1858.	..
	Ditto 1859.	..
	India Stock	..
	India 3 per Cent. 1859	103½
	India Bonds (£1000)	9 dis.
	Do. (under £1000)	5 dis.
	Exch. Bills (£1000)	4 dis.
	Ditto (£500)	1 dis.
	Ditto (Small)	..
	RAILWAY STOCK.	
Shrs.		
Stock	Birk. Lan. & Ch. Junc.	83
Stock	Bristol and Exeter	96½
Stock	Cornwall	6⅜
Stock	East Anglian	17½
Stock	Eastern Counties	52
Stock	Eastern Union A. Stock	40
Stock	Ditto B. Stock	29
Stock	Great Northern	110½

	RAILWAYS—*Continued.*	
Shrs.		
Stock	Ditto A. Stock	111
Stock	Ditto B. Stock	134
Stock	Great Western	73¾
Stock	Lancash. & Yorkshire	119
Stock	London and Blackwall	62
Stock	Lon. Brighton & S. Coast	115
Stock	Lon. Chatham & Dover	52
Stock	London and N.-Wstrn.	100¾
Stock	London & S.-Western.	94½
Stock	Man. Sheff. & Lincoln.	48⅜
Stock	Midland	134¾
Stock	Ditto Birm. & Derby	108
Stock	Norfolk	94
Stock	North British	63
Stock	North-Eastn. (Brwck.)	103½
Stock	Ditto Leeds	91
Stock	Ditto York	90
Stock	North London	103
Stock	Oxford, Worcester, & Wolverhampton	100
Stock	Shropshire Union	51
Stock	South Devon	43
Stock	South-Eastern	86
Stock	South Wales	66
Stock	S. Yorkshire & R. Dun	79
Stock	Stockton & Darlington	40⅞
Stock	Vale of Neath	70

London Gazettes.

Windings-up of Joint Stock Companies.

FRIDAY, Nov. 30, 1860.

UNLIMITED IN CHANCERY.

PHŒNIX LIFE ASSURANCE COMPANY.—V.C. Wood will proceed on Dec. 11, at 1, to settle the lists (classes C and D) of contributories of this company.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, Nov. 27, 1860.

BERDOE, WALTER, Tailor and Outfitter, Cornhill, and 96, New Bond-street, Middlesex. Powell, Solicitor, 13, Newgate-street, E.C. Dec. 30.

BRADLEY, WILLIAM ALEXANDER, Attorney-at-law, Cardiff, Glamorganshire, Dalton, Solicitor, Cardiff. Dec. 31.

BROWN, JOHN, Gent., Stanway, Essex. Laing, Solicitor, Colchester, Essex. Jan. 8.

CATLOW, JOHN, Corn Dealer, Blackburn, Lancashire. L. & W. Wilkinson, Solicitors, 75, Ainsworth-street, Blackburn, Jan. 2.

GIBSON, EDWARD, Farmer, Cloughton, Yorkshire. Donner & Woodall, 36, Queen-street, Scarborough. Jan. 26.

KINGDOM, MARY, Widow, 29, Imperial-square, Cheltenham, relict of John Kingdom, Esq., 29, Imperial-square. Rains, Solicitor, 15, Fish-street-hill, London. Dec. 20.

TAYLOR, ADAM, Esq., Surrey-street, Norwich. Taylor, Solicitor, Orford-place, Norwich. Jan. 25.

WILLIAMS, CHARLES CROFTS, Esq., Roath Court, Glamorganshire. Loftus & Young, Solicitors, 10, New-inn, London. Dec. 31.

FRIDAY, Nov. 30, 1860.

BEASLEY, FREDERICK, Esq., formerly of Ardres, near Calais, France, and late of 135, Great Portland-street, Middlesex. Dec. 31. Page, Solicitor, 21, Manchester-square, Middlesex.

ELLIN, WILLIAM, Innkeeper, Walton, Yorkshire. March 2. Coates & Son, Solicitors, Wetherby, Yorkshire,

GILBERT, GEORGE, Licensed Victualler, Prince Albert Tavern, Oxford-road, Lower-road, Islington, Middlesex. Jan. 10. Monckton & Co, Solicitors, 1, Raymond-buildings, Gray's-inn.

PLATT, AMBROSE, Farmer, Beckering's-park, Ridgmount, Bedfordshire Jan. 17. Eagles, Solicitor, Ampthill, Bedfordshire.

LATHAM, SAMUEL, Esq., Epping, Essex. Jan. 1. J. & W. Sheffield, Solicitors, 68, Old Broad-street, London.

STANSFELD, AMELIA, Widow, Field House, New Cross, Deptford, Surrey. Rivington, Solicitor, 1, Fenchurch-buildings, London. Dec. 31.

STINSON, JOSEPH, Licensed Victualler, Yorkshire Tavern, Philip-lane, London Wall. Cox & Sons, Solicitors, 14, Size-lane, London. Dec. 31.

TANNER, WILLIAM ROBERT, Gent., 6, Oakley-square, Chelsea, Middlesex. Patten, Solicitor, 41, Ely-place, Holborn, London. Jan. 24.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, Nov. 27, 1860.

ALLSOP, JOSEPH, Framesmith and Eating-house Keeper, Leicester. Inchley *v.* Allsop, M.R., Dec. 17.

BOWDEN, JOHN, Innkeeper & Veterinary Surgeon, Howden, Yorkshire. Burland *v.* Bowman, V.C. Stuart. Jan. 10.

EGLIN, JOSEPH, Merchant & Ship Owner, Cottingham, Yorkshire. Eglin *v.* Sanderson, V.C. Stuart. Dec. 18,

NICKS, THOMAS, Solicitor, Warwick. Nicks *v.* Nicks, V.C. Stuart. Jan. 10.

PYM, FRANCIS, Esq., Hasell, Bedfordshire, and also FRANCIS LESLIE PYM, 41, Sussex-square, Brighton, formerly of Radwell House, Baldock, Hertfordshire. Pym *v.* Pym, M.R. Dec. 22.

REDDROP, WILLIAM, Gent., Black Park, Whitchurch, Salop. Reddrop *v.* Etches, V.C. Stuart. Jan. 9.

THOMPSON, WILLIAM, Esq., Hanover-street, Bath. Thompson *v.* Tomkins, V.C. Kindersley. Jan. 9.

WILLIAMS, JAMES, Factor, St. Paul's-square, Birmingham Lucas *v.* Williams, V.C. Stuart. Jan. 8.

(County Palatine of Lancaster).

FRIDAY, Nov. 30, 1860.

TAYLOR, ELIZABETH, Liverpool. Heaton *v.* Smith, Registrar for District Court of Chancery, Lancaster, 1, North John-street, Liverpool. Jan. 1.

FRIDAY, Nov. 30, 1860.

DAVIES, RICHARD, Gent., Shrewsbury, Salop. Williams *v.* Cooke, V.C. Stuart. Jan. 10.

MILES, CHARLES, Gent., 7, Bedford-place, Notting-hill, Middlesex. Miles *v.* Miles, V.C. Stuart. Jan. 10.

MILNE, JOHN, Gent., Prior-street, Greenwich, Kent. V.C. Kindersley. Jan. 14.

OSBORNE, ROBERT, Shopkeeper, Redruth, Cornwall. Osborne *v.* Osborne, V.C. Wood. Dec. 23.

PRICE, HUGH MORGAN, formerly of 4, Skinner's-place, Size-lane, London, and late of Lyonshall, Herefordshire. Gyett *v.* Williams, V.C. Wood. Jan. 11.

Assignments for Benefit of Creditors.

TUESDAY, Nov. 27, 1860.

ALEXANDER, WILLIAM, Saddler, Leeds. Oct. 29. *Sol.* Maud, Leeds.

BENTHAM, ALFRED, Confectioner, 134, High-street, Notting-hill, Middlesex. Nov. 15. *Sol.* Adcock, 3, Copthall-buildings, Throgmorton-street,

DODD, STEPHEN, & JOHN CHARLES PERLING, Booksellers & Stationers, Woburn, Bedfordshire. Nov 3. *Sol.* Richardson, 15, Old Jewr. -chambers, London.

MORCOM, WILLIAM, Ham Mills, Thatcham, near Newbury, Berks. Nov. 7. *Sols.* Messrs. Nelson, 11, Essex-street, Strand.

NEECH, JOHN, Miller & Merchant, Aylsham, Norfolk. Oct. 1, *Sol.* Scott' Aylsham.

SMITH, JOSEPH WILLIAM, Manufacturer, Batley Carr, Yorkshire. Nov. 16. *Sol.* Walker, Dewsbury.

TILLETT, SAMUEL, Upholsterer, Halesworth, Suffolk. Nov. 17. *Sol.* Read, Halesworth.

WHEELER, FREDERICK, Upholsterer, 31, Lower Belgrave-street, Pimlico, Middlesex. Nov. 16. *Sol.* Kinsey, 9, Bloomsbury-place, Middlesex.

FRIDAY, Nov. 30, 1860.

BURRIDGE, HENRY, Grocer & Tea Dealer, 15, Cropley-street, Hoxton, Middlesex. Nov. 3. *Sol.* Drew, 4, New Basinghall-street, London.

DURRIDGE, RICHARD, Tailor and Draper, Great Malvern, Worcester and Ledbury, Herefordshire. Nov. 6. *Sol.* Reece, Ledbury.

GRAVES, RICHARD, Tailor, 313, High Holborn, Middlesex. Nov. 24. *Sol.* Low 65, Chancery-lane, Middlesex.

MCCAW, WILLIAM, Tea Dealer, Liverpool. Nov. 8. *Sol.* Mathews, 102, Leadenhall-street, London.

SYKES, WILLIAM, Builder, Bellefield, Sheffield. Oct. 30. *Sol.* Vickers. Sheffield.

THOMPSON, HENRY, Merchant, Fareham, Southampton. Nov. 26. *Sols.* Paddon & Thorpe, Fareham.

WINCHURST, ISAIAH, Shopkeeper & Toy Dealer. Rhyl, Flintshire. July 7. *Sol.* Williams, Rhyl.

WINSON, THOMAS, Miller, Great Tey, Essex. Nov. 14. *Sols.* Stevens & Beaumont, Great Coggeshall.

YORKE, WILLIAM HENDING, Ironmonger, 5½, Theobald's-road, Middlesex. Oct. 26. *Sol.* Edwards, 1, Summer-row, Birmingham.

Bankrupts.

TUESDAY, Nov. 27, 1860.

BIRRELL, ANDREW IRWIN, Licensed Victualler, 163, Duke-street, Liverpool. *Com.* Perry: Dec. 10 & 28, at 11; Liverpool. *Off. Ass.* Turner. *Sol.* Conway, Liverpool. *Pet.* Nov. 21.

COWARD, MARIA, Grocer & Shopkeeper, Church Coniston, Lancaster. *Com.* Jemmett: Dec. 14 & Jan. 11, at 12; Manchester. *Off. Ass.* Hernaman. *Sols.* Sale, Worthington, Shipman, & Seddon, Manchester. *Pet.* Nov, 17.

DAWSON, EDWIN, Music Seller, Sheffield. *Com.* West: Dec. 8, & Jan, 12, at 10; Manchester. *Off. Ass.* Brewin. *Sol.* Unwin, Sheffield. *Pet.* Nov. 22.

FAIRBRIDGE, WILLIAM, Butcher, Coatham, Kirkleatham, Yorkshire. *Com.* Ayrton: Dec. 10 & Jan. 7, at 11; Leeds. *Off. Ass.* Hope. *Sols.* Carriss & Cudworth, Leeds. *Pet.* Nov. 26.

FAIRBRIDGE, WILLIAM, jun., Butcher, Redcar, Yorkshire. *Com.* Ayrton: Dec. 10 & Jan. 8, at 11; Basinghall-street. *Off. Ass.* Hope. *Sols.* Cariss & Cudworth, Leeds, *Pet.* Nov. 26.

JENNINGS, ANGUS, & WILLIAM TAYLOR JENNINGS, Ship Stores & Commission Merchants, 14, Little Tower-street, London. *Com.* Fonblanque: Dec. 11, at 1, & Jan. 8, at 12; Basinghall-street. *Off. Ass.* Stansfeld. *Sol.* Redpath, 27, Walbrook, London. *Pet.* Nov. 26.

MITCHELL, HENRY JOHN, Licensed Victualler, 82, Park-street, Grosvenor-square, Middlesex. *Com.* Holroyd: Dec. 7, at 2.30, & Jan. 12, at 12; Basinghall-street. *Off. Ass.* Edwards. *Sols.* Harrison & Lewis, 6, Old Jewry, London. *Pet.* Nov. 26.

PAPPS, RICHARD GEORGE, Builder, 32, Barbican, London. *Com.* Evans: Dec. 6, at 11, & Jan. 3, at 1; Basinghall-street. *Off. Ass.* Johnson. *Sol.* Lumley, 41, Ludgate-hill. *Pet.* Nov. 23.

READ, WILLIAM, Builder, 28, Dorset-street, Portman-square, Middlesex. *Com.* Goulburn: Dec. 7 & Jan. 9, at 11; Basinghall-street. *Off. Ass.* Pennell. *Sol.* Sadler, 28, Golden-square, London. *Pet.* Nov. 26,

REED, THOMAS SADLER, Silk Manufacturer, Derby. *Com.* Sanders: Dec. 11 & Jan. 15, at 11.30; Nottingham. *Off. Ass.* Harris. *Sols.* James & Knight, Birmingham. *Pet.* Nov. 23.

RHODES, BENJAMIN, & GEORGE RHODES, Brass Founders & Machinists, Mansfield-road, Nottingham. *Com.* Sanders: Dec. 13 & Jan. 10, at 11; Nottingham. *Off. Ass.* Harris. *Sols.* Hunt & Son, Solicitors, Weekday-cross, Nottingham. *Pet.* Nov. 24.

RICHARDS, WILLIAM, Commission Agent, Pontypridd, Glamorganshire. *Com.* Hill: Dec. 10 & Jan. 8, at 11; Bristol. *Off. Ass.* Miller. *Sols.* Bevan, Girling, & Press, Bristol. *Pet.* Nov. 20.

RICHARDSON, BENJAMIN, Glass Manufacturer, Wordsley, Staffordshire. *Com.* Sanders: Dec. 7 & Jan. 17, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* James & Knight, Birmingham, or Bolton & Sanders, and Wainwright, Dudley. *Pet.* Nov. 8.

SHERRATT, PETER, Silk Manufacturer, Macclesfield. *Com.* Jemmett: Dec. 19 & Jan. 9, at 12; Manchester. *Off. Ass.* Fraser. *Sols.* Allen & Aston, Princess-street, Manchester. *Pet.* Nov. 23,

THOMAS, EDWARD, Iron Master, Walsall, Staffordshire. *Com.* Sanders: Dec. 14 & Jan. 17, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Hodgson & Allen, Birmingham. *Pet.* Nov. 26.

TOMEY, JAMES, Grocer, 2, Queen's-road, Chelsea, Middlesex. *Com.* Evans: Dec. 8 & Jan. 8, at 12; Basinghall-street. *Off. Ass.* Bell. *Sols.* Matthews, Carter, & Bell, 102, Leadenhall-street. *Pet.* Nov. 15.

TURNER, EDWARD, Grocer, Marsh Side, Kirkby, near Broughton, Furness, Lancashire. Dec. 7 & Jan. 4, at 12: Manchester. *Off. Ass.* Fraser. *Sols.* Musgrave, Whitehaven, or J. & R. Cooper, Manchester. *Pet.* Nov. 14.

FRIDAY, Nov. 30, 1860.

ARNOLD, WILLIAM, Innkeeper & Publican, Newchurch West, Monmouthshire. *Com.* Hill: Dec. 11, and Jan. 8, at 11; Bristol. *Off. Ass.* Miller. *Sols.* Batt, Abergavenny, or Bevan, Girling, & Press, Bristol. *Pet.* Nov. 16.

COOMBS, SAMUEL HOWARD, Boot & Shoe Maker & Leather Seller, Oswestry, Salop. *Com.* Sanders: Dec. 13, and Jan. 17, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* T. & C. Minshall, Oswestry, or James & Knight, Birmingham. *Pet.* Nov. 29.

CROFTS, JOSEPH, Builder, Walsall, Staffordshire. *Com.* Sanders: Dec. 13, and Jan. 17, at 11: Birmingham. *Off. Ass.* Whitmore. *Sols.* Duignan & Ebsworth, Walsall. *Pet.* Nov. 28.

DAVIES, SAMUEL, Draper & Shopkeeper, Tredegar, Monmouthshire. *Com.* Hill: Dec. 11, and Jan. 8, at 12: Bristol. *Off. Ass.* Miller. *Sols.* Gregory & Son, Bristol. *Pet.* Nov. 26.

GIBSON, WILLIAM, Draper, Castle Donington, Leicestershire. *Com.* Sanders: Dec. 11, and 27, at 11.30; Nottingham. *Off. Ass.* Harris. *Sol.* Huish, Castle Donington. *Pet.* Nov. 27.

HEATH, CHARLES, Coffee-house Keeper, 39, Oxford-street, Southampton. *Com.* Fonblanque: Dec. 11, at 12.30; and Jan. 9, at 12; Basinghall-street. *Off. Ass.* Graham. *Sol.* Weymouth, 13, Clifford's-inn, London. *Pet.* Nov. 27.

HINTON, ARCHIBALD, Victualler, Highbury Barn Tavern, Highbury, Middlesex. *Com.* Evans: Dec. 18, and Jan. 17, at 1; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Norton, Son, & Elam, New-street, Bishopsgate. *Pet.* Nov. 3.

HIRST, JOSEPH BARBER, Cloth Manufacturer, Holme, Almondberry, York. *Com.* Ayrton: Dec. 10, and Jan. 7, at 11; Leeds. *Off. Ass.* Hope. *Sols.* Brook, Freeman, & Batley, Huddersfield, or Bond & Barwick, Leeds. *Pet.* Nov. 20.

HUTCHINSON, MATTHEW, Hemp & Flax Dealer, 48, Mark-lane, London, and Paragon, Blackheath, Kent (Mathew Hutchinson, & Son). *Com.* Goulburn: Dec. 12, at 1, and Jan. 14, at 12; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Hensman & Nicholson, 25, College-hill.

MACINTOSH, JOHN, Draper, Merthyr Tydfil, Glamorganshire. *Com.* Hill; Dec. 11 & Jan. 8, at 11; Bristol. *Com.* Hill. *Off. Ass.* Miller. *Sols.* Bevan, Girling, & Press, Bristol. *Pet.* Nov. 17.

MARTIN, HENRY, Tailor, Hanover-buildings, Southampton. *Com.* Goulburn: Dec. 12, at 1.30, and Jan. 14, at 1; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Paterson & Son, 7, Bouverie-street, Fleet-street, London, or Mackey, Southampton. *Pet.* Nov. 27.

PACE, HENRY, Merchant & Shipping Agent, 40, Broad-street-buildings, London. *Com.* Holroyd: Dec, 11, at 1.30 and Jan. 15, at 1; Basinghall-street. *Off. Ass.* Edwards. *Sol.* Voules, 16, Gresham-street, London. *Pet.* Nov. 28.

REES, WILLIAM NORTH, Printer & Stationer, 38, Gracechurch-street, London, late of 31½, Clement's-lane. *Com.* Holroyd: Dec. 11, at 2.30, & Jan. 15, at 12; Basinghall-street. *Off. Ass.* Lee. *Sols.* Sole, Turner, & Turner, 68, Aldermanbury, London. *Pet.* Nov. 27.

SMITH, HENRY, HENRY WILLIAM WITHERS, CHARLES WILLIAM COEN, & GEORGE PARSSON, Coal Merchants, Creek Bridge-road, Deptford, Kent (Smith, Withers, & Co). *Com.* Fane: Dec. 11 & Jan. 11, at 11; Basinghall-street. *Off. Ass.* Cannan. *Sol.* Sandom, Deptford, and 5, Duke-street, London-bridge, Southwark. *Pet.* Nov. 13.

TOWNSON, THOMAS, Chemist, Druggist, & Sauce & Pickle Manufacturer, Leamington Priors, Warwickshire. *Com.* Sanders: Dec. 10, and Jan. 14, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Heath, Leamington, or James & Knight, Birmingham. *Pet.* Nov. 21.

WILTON, MATTHEW HENRY, Grocer, Southport, Lancaster. *Com.* Perry: Dec. 14, and Jan. 4, at 11. *Off. Ass.* Morgan. *Sols.* Forshaw & Goodman, Sweeting-street, Liverpool. *Pet.* Nov. 29.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, Nov. 27, 1860.

ASHBY, JOHN, Builder, 14, Carlisle-street, Soho, Middlesex. Dec. 19, at 1; Basinghall-street.—BARBER, JOHN, Machine & Roller Maker, 17, Bromley-street, Manchester. Dec. 21, at 12; Manchester.—BENJAMIN, NATHAN, & EDWARD DIPPLE, Gas Fitters, 19, New Cut, Lambeth, Surrey. Dec. 20, at 1; Basinghall-street.—GARRARD, WILLIAM PASKELL, Wine and Spirit Merchant, 16, Little Tower-street, London. Dec. 19, at 12; Basinghall-street.—LIGHTFOOT, THOMAS, Ship Builder, Sunderland. Dec. 19, at 12; Newcastle-upon-Tyne.—M'CLARE, JAMES, jun., Manchester Warehouseman, Manchester. Dec. 19, at 12; Manchester.—MILLIGAN, JOHN, Draper, 10, Sidney-street, Chorlton-upon-Medlock, Manchester. Dec. 21, at 12; Manchester.—MOSS, JURGEN, Ship Broker, Swansea, Glamorganshire. Dec. 20, at 11; Bristol.—OLIVER, DAVID STODHART, Wine & Spirit Merchant, Holy Cross, Bristol. Dec. 20, at 11; Bristol.—PEARSON, WILLIAM OGILVY, Silk Agent, Milton-road, Gravesend, Kent, and late of Gresham-street, London. Dec. 20, at 12.30; Basinghall-street.—RODGERS, JOHN, Draper, North Shields. Dec. 19, at 12; Newcastle-upon-Tyne.—SMITH, JAMES HERBERT, Tanner, Wyld's-rents, Bermondsey, Surrey. Dec. 19, at 11; Basinghall-street.

FRIDAY, Nov. 30, 1860.

CARMICHAEL, JOHN, Merchant, Liverpool. Dec. 20, at 11; Liverpool.—CLARKE, JOSEPH, Tanner, Currier, Leather Factor, & Japanner, Kidderminster and Bewdley, Worcestershire (Richard & Joseph Clarke). Dec. 11, at 12; Basinghall-street.—CLARK, THOMAS, Paper & Bag Merchant, Bradford. Dec. 21, at 11; Leeds.—DANIELS, ABRAHAM, Merchant, Alexander-square, Brompton, Middlesex. Dec. 21, at 11, Basinghall-street.—DEMETRIO, DEMETRIO ANTONIO DI, Merchant, 38, New Broad-street, London (A. di Demetrio & Sons). Dec. 21, at 1; Basinghall-street.—FLINT, JOHN PETER, Plumber, Glazier, & Gas Fitter, Sheffield. Dec. 22, at 10; Sheffield.—GILYARD, WILLIAM, & SAMUEL BROWN, Machine Wool Combers & Woolstaplers, Bradford (Samuel Brown & Co.) Dec. 21, at 11; Leeds. Same time sep. est. of William Gilyard; and of Samuel Brown.—GOLDSMITH, KEMP, Miller, Sutton, Ely, Cambridgeshire. Dec. 21, at 12; Basinghall-street.—GIBSON, WILLIAM Farmer, Godalming, Surrey. Dec. 21, at 11.30; Basinghall-street.—JONES, WILLIAM, Tailor, Hosier, Hatter, & Outfitter, Aldershot. Dec. 21, at 11; Basinghall-street.—LIMBRICK, RICHARD, Miller, Golden Valley Mill, Bitton, Gloucestershire. Jan. 3, at 11; Bristol.—PARS, THOMAS HUSTLER, Grocer, Newmarket St. Mary, Suffolk. Dec. 21, at 12; Basinghall-street.—READ, FRANCIS BENNETT JOHN, Butcher, Leadenhall-market, London, and 12, Upper North-street, Bethnal-green, Middlesex. Dec. 21, at 11; Basinghall-street.—ROGERS, STEPHEN, Licensed Victualler, 44, Carnaby-street, Regent-street, Middlesex. Dec. 11, at 11; Basinghall-street.—STEPHENSON, JAMES JOSIAH, known as James Stephenson, Cabinet Maker & Upholsterer, 36, Crawford-street, Bryanstone-square, St. Maryiebone, Middlesex. Dec. 21, at 11; Basinghall-street.—WAKEFIELD, GEORGE VICKERY, & ROBERT BIRT, Hotel Keepers, Swansea, Glamorganshire. Dec. 21, at 11; Bristol.—WATSON, EDWARD MORRIS, Linendraper, 72, Tottenham-court-road, Middlesex. Dec. 31, at 1.30; Basinghall-street.

We cannot notice any communication unless accompanied by the name and address of the writer

***Any error or delay occurring in the transmission of this Journal should be immediately communicated to the Publisher*

THE SOLICITORS' JOURNAL.

LONDON, DECEMBER 8, 1860.

CURRENT TOPICS.

We notice in a Belfast newspaper the following letter relative to the withdrawal of the petitioners' counsel in the Shedden case:—

"London, 23rd November, 1860.

"MY DEAR SIR—I have read the article in the *Belfast Daily Mercury*, which you have been so good as to send me, in which my name is mentioned as one of the counsel in a cause of *Shedden* v. *Patrick*, and in which the conduct of the bar in that case is spoken of as 'disgraceful.'

"The conduct of a public body, such as is the bar, must always be open to, and be benefited by, fair and truthful criticism; but I cannot help regretting that a useful and natural reference to an interesting legal trial should be marred by a wholly inaccurate and unfounded charge against some of those connected with it.

"So far as I am concerned, the case is simply this. A little more than forty-eight hours before the day fixed for hearing the cause of *Shedden* v. *Patrick*, I was requested to conduct the case as one of the counsel for the plaintiffs. The Court before which it was to be heard is one in which I do not generally practise, and the papers in the case were of a most voluminous and complicated description. Under these circumstances I deemed it improper to accept the very large remuneration usual on such occasions, unless I could, consistently with pre-existing engagements, devote to the case time and attention such as it required. I therefore stated—and, in order to prevent mistake, I stated in writing—that, if a postponement of the case for some days could be obtained, I would undertake to make myself master of it, and that I would concur in an application for this postponement; but that if—as appeared not improbable—the application for a postponement should be refused, I could not accept the brief.

"I accordingly joined in requesting the Court to postpone the hearing; and, this request being unsuccessful, I retired from the case.

"Our profession is occasionally charged with undertaking more business than can properly be attended to; but it is something now to find an opposite course made a subject of complaint.—Believe me, yours faithfully,

"H. M. CAIRNS."

As far as Sir Hugh Cairns individually is concerned, this forcible, yet most temperate, justification will be conclusive. We are unable to say whether the other counsel stood in an exactly similar position; but we believe the profession, and that portion of the public which is capable of estimating fairly an advocate's responsibilities, are willing to give them credit for the best motives. In forming any opinion upon the subject, it ought not to be forgotten that Miss Shedden herself exhibited in court some evidence of a readiness, if not a desire, on her part to take the opening of the case into her own hands. Sir C. Cresswell intimated pretty plainly in the course of the case that this was his view.

In the interest of the public the withdrawal of the petitioners' counsel is doubtless on one account to be regretted; it led to the protraction of the proceedings beyond all reasonable bounds. Probably, before the fourteen days' sitting was over, the Court often lamented its refusal to postpone the hearing, and allow counsel to prepare themselves to conduct the case.

Information was received by the last Indian mail of the death of Sir Henry Davison, the Chief Justice of Madras. It is only about two years since he received his appointment, and his comparatively early death is said to be attributable to the effects of the Indian climate. Sir Henry Davison was known to the profession in this country as one of the authors of Davison and Merivale's, and of Gale and Davison's Reports.

The sittings after term of the Court of Chancery recommenced on the 4th instant. The number of appeals for hearing before the Lord Chancellor and the Lords Justices was only 13, of which 8 have been set down since the commencement of Michaelmas Term. The total number of causes set down for hearing before the different Courts is 322, viz., before the Master of the Rolls 109; before Vice Chancellor Kindersley 43; before Vice Chancellor Stuart 80; and before Vice Chancellor Wood 90. Not much progress has yet been made in the disposal of business in any of the Courts.

THE CASE OF *LANEUVILLE* v. *ANDERSON.*

The number of Englishmen possessing property who reside more or less permanently in France is large, and the questions of international law arising upon their testamentary dispositions are many and difficult. The first question in such cases is usually that of domicil, and this question must be determined by applying to a mass of disputed and perhaps remote facts certain rules which have been established by frequent and costly litigation. The application of these rules has so often disappointed the expectations of families and the evident intention of testators, that they have at length become sufficiently familiar to practitioners, and future miscarriages are only likely to occur through the folly of testators who choose to be their own lawyers. But there are many interesting and by no means obvious consequences arising from the rule that the law of the domicil governs the succession to personal estate; and the case upon which we now propose to comment is well worthy of attention for the light which it throws on some of them.

The judgment lately given in this case by Sir C. Cresswell after several days' elaborate argument, and after mature deliberation by the judge, has for the present terminated a litigation which has occupied the French and English courts for upwards of ten years. The testator, William Anderson, died at Paris in 1849, leaving an English will made in 1843, and a French will made in 1848. By the English will the testator gave a money legacy to a cousin, and subject thereto he gave all his real estate in Ireland and elsewhere, and he gave certain enumerated particulars, and all his personal estate, to his nephew William Anderson, one of the defendants in the present cause. By the French will the testator instituted "pour légataire universelle" Madame Burthé, and named "pour executeur testamentaire" M. Guichard, avocat, of Paris, the other defendant in the cause. The first question that arose was that of domicil, which was obstinately litigated in England. The Prerogative Court decided that the testator, at the times of making his will in 1848, and of his death, was domiciled in France, and this decision was affirmed on appeal by the Privy Council. The testator's nephew, William Anderson, had contended for an English domicil. If he had made out his case, the will of 1848, which was a holograph will valid according to French law, would have been declared invalid for want of the attestation of witnesses required by the English statute. But as the testator's domicil was held to have been French, it followed that the will of 1848 was good. As regards the will of 1843, it appears to have been held that at the time of making that will also the testator was domiciled in France. If he had been then domiciled in England, and had afterwards changed his domicil to France, what would have be n the effect of that change upon the validity of the English will? In order to answer this question we must

first consider by what law should the effect of the change be estimated, and it appears that the law to be appealed to is that of the testator's domicil at his death, viz., the law of France. What then does that law require in the case of one who has become domiciled in France after having made a will in the country of his former domicil, with reference to the validity of such a will? We believe that the French law will be satisfied with the forms of the prior domicil. If this be so, it follows that this testator's will of 1843 would have been valid according to the law of France, even if he had changed his domicil after making it. Sir C. Cresswell, however, appears to have considered that this will would have become inoperative by the change of domicil for want of the forms required in the new domicil; and perhaps this is the rule of English law, to which by a momentary forgetfulness the judge seems to have appealed. However, as the domicil was held to have been changed before 1843, the nice question which we have been pursuing did not arise. The point to be considered was, what does the French law prescribe as to the wills of those who are subject to it? Now that law admits the validity of a will made abroad with the forms of the country where it is made; and, therefore, the testator, a domiciled Frenchman, having in 1843 made a will in England in the English form, that will was held valid by the law of France, the country of the testator's domicil at his death. We have thus far pursued this question because a better illustration could not be found of the difficulties of the law of domicil. And now, to return to our more immediate subject, we find the result to be that, so far as regarded the formalities demanded by the French law, both wills were good; and it remained to consider whether both could stand together, or whether they were inconsistent, in which case the latter would prevail.

It was contended by the representatives of Madame Burthé, who was now dead, that the second will disposed of all the testator's property in a manner at variance with the former will, which it therefore revoked by implication although not expressly. It was further contended that upon this point the Court ought to adopt the decision which had been given by a French tribunal, to which it properly belonged to decide what was the last will of a domiciled Frenchman. Sir C. Cresswell delivered his opinion in conformity with the French judgment, and he thus avoided the necessity of deciding whether or not he would have been bound by that judgment in case he had disapproved of it. The defendant Anderson contended that the language of the second will showed that it was confined to property in France. Upon the legal meaning and effect of this will, the Court was assisted by the evidence of eminent French lawyers. The result of that evidence was that the words "légataire universelle" taken by themselves would make Madame Burthé legatee of all the testator's property; but if these words were preceded by specific legacies, or by a gift in general terms of an entire share of the testator's property—the "legs particulier," or "legs à titre universel" of the code—then the words "légataire universelle" would be equivalent to "residuary legatee," and would not be incompatible with the former part of the will. Again, if a first will gave specific legacies, and made no "légataire universel," and a second will instituted a "légataire universel," the two would not be incompatible, but the general expression in the second will would be explained and controlled by the first. Again, if a first will gave specific legacies, and appointed a "légataire universel," and a second will merely appointed a "légataire universel," he would be considered as substituted for the first, and the specific legacies given by the first will would not be revoked. But if a second will appointing a "légataire universel" contained words showing that the technical expression was used in its primary sense, and that the intention was to give all to the legatee, then it was incompatible with any different disposition in a former will, and of necessity revoked it. The argument for the defendant Anderson, founded upon these distinctions of the French lawyers, appears to have been this—that the bequests to Anderson in the English will were specific, followed by a general residuary bequest, and that as, upon the construction contended for by that defendant, the French will only applied to property in France, both the specific bequests and the residuary bequest of the English will must still have their full effect as to all the testator's property out of France. It appears tolerably plain, however, that the English will contained a mere enumeration of particulars followed by general words, and that the whole amounted to no more than an ordinary residuary bequest. But even supposing the argument founded on the alleged specific character of the bequest to be untenable, there still remained the general clause dealing with all the property; and it was contended that this residuary bequest was not revoked as to property in England by the gift by the French will of property in France only. The question thus raised would have been a difficult one; but Sir C. Cresswell was not called upon to decide it, because he held that in the second will the testator had used the words "légataire universelle" in their primary sense, as indicating that the legatee was to take all his property everywhere; and, therefore, those words were incompatible with the former will, and, as far as regarded personal property, would revoke it. The judgment upon this point turned on a minute verbal criticism of the French will, upon which the defendant's counsel had argued very ingeniously against what appears to be its plain meaning.

Another difficult question arose as to the right of Guichard, the "executeur testamentaire," named in the will of 1848, who now claimed probate of that will in England. There had been a dispute between the three representatives of Madame Burthé, the "légataire universelle" named in the will, and Guichard seems to have been put forward by one of those representatives in opposition to the two others. This latter question, therefore, was litigated among the representatives of Burthé, whereas the former question lay between those representatives and Anderson. There had been a judgment of a French court in 1856 upon the claim which Guichard had assented to intervene in his quality of executor. The grounds of that judgment were that Guichard was appointed executor, but without what is called seisin; that the testator's domicil was French, as had been decided in 1854 by the English Privy Council, and therefore the nature and extent of the office of executor conferred on Guichard must be estimated by French and not by English law, even for property situate in England; and that if the quality of executor can, under certain circumstances, continue beyond one year, it cannot continue indefinitely and without utility to the realization of the intention of the testator. It was on these grounds declared that the executorship of Guichard was expired, and that he had no title to meddle in the affairs of the succession either in France or England. After two unsuccessful appeals against this French judgment, Guichard now sought to obtain a contrary decision from the English Court of Probate. It was contended by his counsel that the right of an executor with reference to property in England must be determined by English law; and as Guichard's appointment was general, and not for a limited time, the Court must still treat him as executor, entitled to all the rights which the English law allows. With regard to the observation that the appointment of executor in a French will is for a year only, it was answered that the grant of probate of French wills by the Prerogative Court had always been general, whereas if the appointment was for a year only the grant of probate should have been limited to that time. It was admitted by Sir C. Cresswell that the practice had been as stated. If immediately after the death of a testator domiciled in France the executor were to apply to the English Court for probate, a difficult question might arise whether

such probate ought to be—as in practice it had hitherto been—general, or whether it should be limited to a single year. But in the present case the time within which the function of executor should have been discharged had expired, and under such circumstances Sir C. Cresswell considered himself to be bound by the decree of the French Court; and therefore he rejected Guichard's claim to probate.

It appears from this case, that if an executor dies domiciled in France, the duration of the power of the executor named in the will must be defined by the French law, even as regards property in England. It also appears that the construction of such a will, and the decision of all questions as to the rights of legatees under it, belong to the French Courts. It is true that Sir C. Cresswell did not expressly decide this point, but he quoted a judgment of Sir Herbert Jenner Fust, which lays down the principle, that in the case of a domiciled subject of France, "the courts of that country are the competent authority to determine the validity of his will, and the succession to his personal estate."

THE TRUSTEES AND MORTGAGEES ACT—(23 & 24 VICT. c. 145).

The necessarily restricted application of this Act, as well as the difference between both the estate and indemnity of a purchaser, under the statutory and under the ordinary powers of a mortgagee, formed the subject of a recent article. Other effects of the peculiar frame of the leading sections in Part 2 of the Act also gave us grounds for animadversion. On the same occasion, the principles of parliamentary conveyancing were touched upon in their general policy. As regards the particular principle on which the Trustees and Mortgagees Act is based, or rather professes to be based, Lord Cranworth and the Legislature did not proceed without authority. An idea had for some time prevailed among conveyancers and practitioners of great repute, that while such measures as the Fines and Recoveries Abolition Act, and the 8th & 9th of Vict., making land lie in grant as well as in livery, were the proper means of simplifying the nature of instruments, the statutory incidence of powers to estates, rather than the symbolical system attempted by Lord Brougham's Lease and Conveyance Acts, was the true machinery for shortening the matter of deeds. Thus, when in 1850 Mr. Christie was asked by the commissioners sitting to consider the registration of deeds and the simplification of the forms of conveyance, if he held any opinion whether anything could be done in the way of shortening conveyances by annexing incidents to particular subjects, he answered:—"I can very well fancy that something could be done in that way. I think something might be done. You might say, that whenever a trust for sale was created, it should empower the trustee to exercise this and that discretion. But then I would do it in the mode of annexing that to his office, not in the form we were referring to, of saying it should have the effect of such and such words. I would let the Legislature say in its own words what it means to enact on the subject." And on being questioned whether, in the case of mortgage, he would say such and such consequences should follow from the transaction, his opinion was that certainly something might be done; and that the mode he had mentioned was the true mode in which conveyances should be shortened. But Mr. Christie thought that much could not be done in the powers of sale and exchange. It would require so much handling in most cases, that he doubted whether they must not be let alone.

It ought not, however, to be supposed that, in order safely thus to lighten the wordy burden of assurances by the substitution of matter of public general enactment for matter of private contract in each case, it would be sufficient to take the powers and provisions of even the most approved forms, and to turn them into the sections of an Act. A different sphere is entered. The characters of the transplanted clauses and the remedies arising on them become changed in the process, unless adequate safeguards be used. Equitable rights accruing under deeds acquire a legal force when included in the written law. Canons of interpretation, by which covenants and grants, or matters in the nature of grants, are to be construed against the covenantor and grantor, and in favour of the covenantee and grantee, must give way before the rules, available to the parties in common, for the right reading of statutes. On a breach of duty imposed by the Legislature, anyone damnified has his action; he need not be a contracting party. In the case of companies' clauses, a remedy by *mandamus* springs up. The infraction of a public Act may involve a prosecution for misdemeanour, while under a deed the proceeding would always be civil.

Influenced apparently by the first of the above distinctions between conveyancing forms enacted for the public good, and the like forms signed, sealed, and delivered *inter partes*, our correspondent of last week, "H. R. D.," has raised a question of very great importance to the title of a purchaser of a mortgaged or charged property under the Trustees and Mortgagees Act. The tenor of his letter makes it almost unnecessary to say, that the writer belongs to that branch of the profession which is occupied with the law of real property transactions rather than with the business of them. We will presently consider whether his view can be supported. Nevertheless, the effect, which adverse opinions from such a quarter have on the destiny of the new measure, does not depend upon their proving tenable or untenable. Their existence is a testimony to doubt; and doubt on a Real Property Act that is not compulsory is fatal to its adoption. The master eye and hand of a Brodie or a Coulson in preparing work for the Legislature can foresee and guard against danger. In the present instance, what is lacking in the draftsman's prudent wisdom must be made up by critical vigilance on all hands in the legal press.

The point mooted by H. R. D. is raised upon a comparison of the effects of the 11th section of the Act which gives the powers to the person to whom the mortgage money "shall for the time being be payable," and of the ordinary mode of providing that the power of sale may be exercised by any person entitled to give a receipt for the purchase money. As we see some reason to differ from our correspondent, we will give his own language:—

"This mode of defining the person by whom they are to be exercised, is found to work well, because, although the exercise of the powers by persons to whom the money was not properly payable would not be of any effect between persons with notice, yet a purchaser for value without notice would be safe, provided nothing appeared on the deeds to show that the powers had been exercised by, or the mortgage money repaid to, other than the right person. But whenever the mortgagor in a mortgage under this Act shall have the legal estate in him at the time of creating the charge, the 15th and 19th sections [the conveyance and receiver sections] will confer legal powers; and it is by no means clear that this vesting of legal powers in a person defined by a purely equitable test will work equally satisfactorily. * * * The question remaining for consideration is, whether a purchaser in possession of the legal estate *conveyed* by the mortgage deed is safe from the consequences of these powers being kept alive by circumstances of which he has no notice. * * * The person to whom the money was payable previously to the improper payment still satisfies that description, and is therefore still entitled to exercise the legal powers of conveying the property after a sale, and of collecting the rents through a receiver: and as these powers extend to 'all the estate or interest which the person who created the charge had power to dispose of,'

they will take precedence of the legal estate conveyed by the same deed."

Had the Act, following the common form, simply given the power of sale to the person to whom the mortgage money might for the time being be payable, we should agree with H. R. D. Indeed, his objection had not escaped us when proceeding to review these clauses; but it appeared to be met by the controlling qualifications subject to which the statutory powers are given. In the enabling section (the 11th) it is declared that the person shall have the powers of sale, insurance, and appointment of a receiver, "to the same extent (but no more) as if they had been in terms conferred by the person creating the charge." This seemed to us to preserve the equitable character of the powers. Yet the words here used are by no means conclusive to that effect; for how is the word "extent" to be understood? Does it, or does it not, go to the character of the power of sale as well as to the mode of exercising it? Therefore the question, whether the Act confers a new legal power, or supplies the old equitable power, could, if it depended on the 11th section only, scarcely be determined without a judicial decision. But, for the protection of purchasers without any notice that the mortgage money is payable to some other person than the party selling, resort may be had to the 33rd section; which is, in substance, that nothing in the Act shall empower trustees or other persons to affect the estates or rights of any persons soever, except to the extent to which they might have affected the estates or rights of such persons, if the instrument under "which such trustees or other persons are empowered to act" had conferred express powers for such trustees or other persons to affect such estates or rights. Assuming that a mortgage deed can be included under the above description in inverted commas, we have then to consider what would be the effect in a deed of giving power to the person to whom the mortgage money might for the time being be payable, to sell so as to defeat the estate of a purchaser taking under the mortgagee the legal estate without notice that the mortgagee was not then entitled to the mortgage money. We should be of opinion, *nil*. Such a power would be an absurd and repugnant attempt to counteract a rule of equity. At the same time, it must be admitted that this is but a lame and roundabout way of saving the great principle of the safety of a purchaser without notice, and withal a way not free from the doubt of treating a mortgage as a deed by which a person is "empowered." All that can be said is, the deed empowers the mortgagee to recover his money in some manner or other.

We are forced upon the whole, to the conclusion that, bearing in mind the ambiguity of the word "extent" in the 11th section, the severance in the frame of the Act of the power to convey from the power to sell, and the limited character of the 33d section, as well as the tortuous application of it, it is really impossible to decide whether the power of sale given by the Act be legal or equitable, and, therefore, to pronounce any confident opinion on the point raised by H. R. D. The courts would undoubtedly seize hold of any plank to throw to a purchaser without notice. This is sorry comfort to a draftsman, whose peace of mind depends upon his preserving his client from a suit, as does an Alpine guide's in keeping his traveller from a *crevasse*.

The necessity of testing the effect of the powers given in the Act by the effect which they would have if given by certain persons, or in certain deeds, indicates a break-down of the principle itself, at least as embodied in this Act, of making powers incident to estates. Practically, such a test amounts to supposing that the particular section giving the power, forms part of the deed in question. Else, in what language are we to imagine the power to be given? Experience may ultimately show, that the safeguards requisite in giving statutory conveyancing powers leave no practical difference between Lord Cranworth's or Mr. Christie's system and Lord Brougham's. In other words, that the only safe way of helping conveyances is by the statutory supply of clauses to them—a result which, in the end, would satisfy the reasonable *a priori* view that the Legislature had better leave men to make their own contracts in their own way.

LIABILITIES OF SHIPOWNERS.

The legal liabilities of shipowners have of late been the subject of much discussion, both in this country and in the United States. In the summer of 1859, the Chamber of Commerce at Liverpool called the attention of the mercantile world to the question, by the publication of an elaborate report which fully explained the present defective state of the law, and contained some valuable suggestions for its amendment. Since that document was published, a committee of the House of Commons has made careful inquiry into the condition of our merchant shipping, with a view to its relief, and of that enquiry the legal liability of shipowners formed an important branch. The Chamber of Commerce at New York has more recently taken the matter under its consideration, and by late accounts from that quarter we learn that Mr. Lindsay, the member for Sunderland, had gone to Washington, in order, if possible, to induce the American Government to come to some international agreement upon the subject. Of the result of his visit we are not yet fully informed.

By the common law of England the liability of shipowners was unlimited; and this was also the rule of the civil law. But England, like other maritime countries, was eventually induced to abandon a rule which operated as a serious check upon commercial enterprise. In the earliest maritime code of Europe, the *Consolato del Mare*, we find the principle of limited liability distinctly laid down (chaps. 141 & 182). It is there stated that the responsibility of a part-owner is limited to the value of his share in the ship. In the course of the seventeenth century this principle of limiting the owner's responsibility to the value of the ship was recognized by the law of Holland, of France, and of the Hanseatic Towns. But it was not until long afterwards that this rule was adopted in England. The first limitation of the liability of owners was introduced in 1734 (7 Geo. 2, c. 15), but the Act then passed was intended only to protect them in case of the embezzlement of goods on board by the master or crew. In the year 1786 another Act was passed (26 Geo. 3, c. 86) which still further limited the liability of owners in the case of robbery by whomsoever committed, and in case of fire. It was not, however, until the year 1813 that the rule which had been so long previously recognised in other commercial countries was introduced into the law of England. By an Act passed in that year (53 Geo. 3, c. 159) the liability of shipowners was practically limited to the extent which has since prevailed. By the Merchant Shipping Act of 1854, the liability of the owners of sea-going ships is defined, where all or any of the following events happen without the fault or privity of the owners: 1st., in case of loss of life, or personal injury to passengers; 2nd., in case of the loss or damage of goods; 3rd, in case of loss of life, or injury caused to persons on board of other vessels in consequence of improper navigation; and 4th., in case of loss or damage happening to any other vessel, or to any goods on board of any other vessel in consequence of improper navigation. In all such cases the Act in question provides that no owner of any such ship, or share therein, is answerable in damages to an extent beyond the value of his ship and the freight due, or to grow due, in respect of such ship during the voyage, which, at the time of the happening of any such events as aforesaid, is in prosecution or contracted for subject to the following proviso, (that is to say), that in no case where any such liability as

aforesaid is incurred in respect of loss of life or personal injury to any passenger shall the value of any such ship, and the freight thereof be taken to be less than fifteen pounds per registered ton. (See s. 503.)

In case of loss of life or personal injury, it is in the discretion of the Board of Trade within the United Kingdom, upon giving three days' notice to the owners to refer to the decision of a jury the following question, namely, the number, names, and descriptions of all persons killed or injured by reason of any wrongful act, neglect, or default, for which the owners are responsible. The Board may enter into a compromise as to the damages, but if it does not do so, then such damages in the case of each death or injury so occasioned, are to be assessed at thirty pounds, and the gross amount so assessed is the first charge upon the value of the ship and freight. It has been decided that the value of the ship is the price for which she would have sold, not at the commencement of the voyage, but immediately before the occurrence of the accident. It has also been decided that the freight available for the payment of damages is that which was due at the same time. It is not competent for any person in case of such loss of life or personal injury, to institute proceedings against the owners of the ship until the inquiry commenced by the Board of Trade is completed, or unless the Board decline to institute such inquiry. Subject to the right of the Board of Trade to recover damages in cases of death and personal injury, the owners may, in order to secure the due distribution of the fund, pay into a court of equity the value of the ship and of the freight at the time of the accident; but in this case, the costs of the suit in equity, as well as the costs of any proceedings taken against the owners at law, or in the Court of Admiralty, must be paid by them.

In addition to the provisions of the Merchant Shipping Act, conferring on the Board of Trade the powers of which we have given a summary, in the case of accidents involving loss of life or personal injury, that statute contains a section (511), to the effect that if any person is dissatisfied with the statutory amount of damages, he is at liberty to bring his action against the shipowner on his own account, provided "that any damages recoverable by such person shall be payable only out of the residue, if any, of the aggregate amount for which the owner is liable." It appears that this section has caused much annoyance as well as loss to the shipowners. Its practical effect is stated to be in the Report of the Parliamentary Committee lately published, "that when an accident occurs, innumerable actions at law are instituted against opulent companies or wealthy shipowners, and under the threats and pressure of legal proceedings, the owners of the incriminated ship are, unless where all the claims arise within one jurisdiction, glad to pay almost any amount of compensation money rather than bring the cause before a court of law." And this state of things is attended with inconvenience to the public as well as to the shipowners; for the Committee add that many of the latter, and those of the wealthiest description, refuse to take passengers on board their vessels on account of the unknown liabilities to which they may be exposed in the event of loss of life. This result we may assume was never contemplated by the Legislature. The provisions of the Merchant Shipping Act were obviously intended to carry out the principle which had been previously recognised that in no case should the liability of the shipowner exceed the value of the ship. Even the objectionable section, the 511th, is explicit upon this point. But if in its practical results it is found to be hurtful alike to the shipowner and the public, we trust that some means may be found of correcting the evil without impairing the salutary powers which are now invested in the Board of Trade with reference to casualties that occur at sea.

But the liabilities of British shipowners are not confined to this country. They may, in the absence of an international arrangement to the contrary, incur indefinite liabilities in foreign countries. Foreign shipowners may in like manner incur an unknown amount of liability in this country; for it has been expressly decided that the 504th section of the Merchant Shipping Act, which limits the liability of British shipowners, does not apply to the owners of foreign vessels. The question arose as follows: a collision took place off the coast of Ireland between two American vessels, one of which, with her cargo, was wholly lost. The other vessel having put back to Liverpool, whence she had sailed, for repairs, she was placed under arrest by an Admiralty warrant, to answer a claim of £8,000 on behalf of the consignees of a part of the cargo of the lost ship. The agents of the incriminated ship having given bail for the amount so claimed, she proceeded on her voyage, and returned to Liverpool in the course of a few months, when a second claim was made under an Admiralty warrant for £1,800, being for another portion of the cargo of the lost vessel. The owners disputed this second claim, but before any final decision was given in the matter, a third claim was made by other parties for £23,000. The owners considering that the amount of the two first claims was fully equivalent to the value of the ship and her freight at the time of the collision, then appealed to the Court of Chancery under the 514th section of the Merchant Shipping Act, in order to have the ship valued, and their liability limited, in terms of the Act. But it was decided by Vice-Chancellor Wood that that limitation of liability does not apply to foreign vessels, and the decision was affirmed on appeal to the Lords Justices. Our remarks upon this important case we must reserve for a future number.

ARREST AND IMPRISONMENT FOR DEBT.

On a recent occasion we adverted to the law of protection and discharge from arrest, with the view of pointing out the inconvenience and uncertainty which it introduces into the relation of debtor and creditor. Such mitigations, however, of the power of arrest and imprisonment for debt are found absolutely necessary, in order to reconcile the continuance of such an institution with the feelings of modern civilization, notwithstanding the *prestige* of centuries of usage in its favour; and modifications of this kind have now so extensively encroached upon the original plain and absolute right of the creditor, that the exercise of it is reduced to very narrow limits. Under these circumstances, it would seem to be a greater innovation in principle than in practical effect to abolish arrest in execution for debt altogether. The suggestion is not novel, but is appropriately and even unavoidably recalled to mind at the present time, when the whole law of debtor and creditor is about to undergo a complete reconsideration. Such a change would undoubtedly be a step gained in the simplification of this branch of the law; it would at once obviate all the antagonistic provisions for discharge and protection, and would remove a multitude of embarrassments in practice. It seems, therefore, only necessary to show that it is equally in accordance with principles of reason and justice—in order to insure the speedy consummation of so desirable an object. What, then, are the grounds on which the present law is maintained, and does any valid reason exist for preserving an institution which is so strongly opposed to the current of modern legislation and modern feeling?

The law of final process against the person of a debtor derives its origin from the times in which human beings were enumerated, like cattle, amongst the subjects of property. The Romans, the great inventors of laws for all the nations of the world ancient and modern which dwell within the pale of civilization, fully recognized the practical applicability of this utilitarian

view f humanity to the realization of debts. In the earliest period of their law they laid down the maxim, *Qui non habet in ære, luat in corpore*, and applied it strictly in its literal meaning. Payment in person with them did not consist in a temporary detention of the debtor in prison, but, so far as the person could be converted into payment, was a stern and literal fact. The body of the debtor was judicially assigned to the creditor in absolute dominion, to be dealt with as freely as any other article of property; the creditor might slay his debtor and dispose of his body to the best advantage, or might sell him alive in the nearest slave market; and where there were several creditors, it is said they might make a piecemeal distribution of the body of the debtor between them.

Amongst this practical people the taking of the debtor in execution had thus a real meaning and a substantial efficacy in payment of the debt. This seems to be all that could be said for it, but was alone sufficient to recommend it to a people whose strictly logical conclusions of law were never tempered by any milder considerations. The more humane influences of modern times, in rejecting the notion that human beings may be dealt with as property, have deprived the institution of the only object which it was designed directly to effect. The taking in execution in the present enlightened age consists merely in depriving the debtor of his liberty, which does not directly contribute in any way towards payment of the debt; and thus the remnant of the institution which has descended to our times retains no perceptible trace of its original meaning, nor does it seem capable of explanation on any rational ground.

One indirect effect, indeed, imprisonment sometimes carries with it, which is not at all within the intention and object of the institution; and, moreover, is as unjust and iniquitous as it is unintended. While the imprisonment fails in securing any payment out of the real debtor, it is frequently successful in extracting payment from others who are not indebted at all. When the real debtor is cast into prison and thereby threatened with ruin in his credit and business, his friends and relations are naturally induced to interpose, if possible, to save him, and supply the money to redeem his liberty. Such a result is highly acceptable to disappointed creditors, who, having miscalculated the sources of credit on which they trusted, can by this means avail themselves of other resources which they never bargained for. It is a result looked for and anticipated by unscrupulous and extortionate money lenders, who regard the debt as a draft upon the kindly and humane feelings of the monied friends of the debtor. The law which thus exacts payment of the debt from those who do not owe it is not only illogical and irrational, but works at times the greatest hardship. Persons wholly innocent of the debt, who neither insured nor guaranteed it, who received no advantage from it and to whom no credit was given, are placed by the law under a constraint to pay; and the best feelings of humanity are made the instruments and means of extortion. In the natural course of things an insolvent falls back upon his friends and relations for his own future support; but by this contrivance they are burdened with the additional weight of his antecedent debts. The fruits which the imprisonment of his debtor thus bears to the creditor are the only efficacious end which it serves, and therefore supply the only motive, apart from mere vindictiveness, for putting the law in execution. Extortion from the friends of the debtor being the only efficacious end of the law, must also be treated as the only ground for maintaining it; and indeed this is sometimes seriously advanced as the great argument in its favour. Upon every consideration of common fairness and humanity, it is the one argument which, beyond all others, most imperatively calls for its immediate repeal.

Arrest and imprisonment for debt may be wholly disregarded in connection with our commercial system. It forms no element in the basis of commercial credit. To large trading companies it is altogether inapplicable; and private traders and trading partnerships are protected from its effects by the law of bankruptcy. The field of its operation is confined to the small pecuniary transactions of private life, where it still retains a wide scope for oppression and hardship. It exercises little or no influence in honest and fair transactions; but is a vital ingredient in the lowest order of money dealings. The abolition of arrest and imprisonment would at the same time put an end to some of the most disgraceful transactions to which the practice of the law is made subservient.

The existence of a similar law throughout most countries of Europe is sometimes asserted as an argument of its practical utility. A practice so universally prevalent must, it is thought, be supported on the grounds of an equally extensive necessity or expediency. The law of imprisonment for debt, it is true, prevails in all the principal countries of Europe, and also in most of the United States of America. But is not the argument drawn from this wide extension of the law altogether fallacious? The law is widely spread only inasmuch as the countries in which it prevails have drawn their laws from a common source, and have imitated the same example. The laws of Europe, in the matter of personal obligations and procedure, have been framed for the most part on the basis of the Roman law; America transplanted her law already formed from England. So far as the law possesses a real efficacy in producing payment, either from the assets of the debtor or from his friends, there may be perceived a substantial ground for maintaining the law common to all countries. In former days, the general insufficiency of the laws of bankruptcy and insolvency to secure the estate of an insolvent gave considerable scope for its operation; but modern contrivances of law have been devised sufficient to extract all the assets of the debtor, without resorting to this process of duress; and the extortion of money from other parties who are not legally involved in the same liability is, as we have pointed out above, a crying and cruel injustice. Moreover, we believe we are fully justified in asserting that the most enlightened jurists are by no means satisfied with the state of the law in their respective countries, and many opinions of eminent men might be cited in favour of the total abolition of imprisonment for debt.

The policy of maintaining this law can scarcely now be deemed an open question. It was submitted to the inquiry of the Common Law Commissioners of 1832, and fully investigated by them in all its bearings. It will be well to recall to notice the conclusion to which, with one dissentient — Mr. Serjeant Stephen — they arrived.

"The principle of the present law is, to do justice by the use of the strong and compulsory means of arrest and imprisonment applied indiscriminately. The system has been found to be productive of so much hardship and injustice, that it was at last deemed to be necessary to mitigate its consequences by the enactment of the insolvent law. The joint operation of the two opposite processes, for the imprisonment and enlargement of debtors, has been productive of so much evil as to lead to the suspicion, which seems to be fully verified by inquiry, that the mischief ought to be obviated, not by provisions designed for the mere mitigation of its consequences, but by removing its cause; that is, by limiting the power of imprisonment itself, and confining it to cases where it is warranted on the plain and just principle of preventing the debtor from fraudulently absconding or removing his property beyond the reach of justice, or for the punishment of actual fraud, or compelling the debtor after judgment either to pay the debt, or make a cession of the whole of his property for the benefit of his credi-

tors." "Beyond this, we believe that the practice of imprisonment for debt is neither warranted in principle, nor beneficial in practice, and that, on the contrary, whilst the exercise of the present almost unlimited power is productive of pecuniary loss, injury, and distress to creditors as well as debtors, it also occasions great moral evils in its tendency to subdue that proper degree of pride and honest feeling which is inconsistent with the degradation of imprisonment in a gaol, and to level the distinction between guilt and misfortune."

It may be observed with respect to the two purposes for which the Commissioners would preserve imprisonment for debt; namely, to correct fraudulent and obstructive conduct on the part of the debtor, and to compel a complete cession of his property for the payment of his creditors, they both seem to be more adequately and suitably provided for in other ways. The former strictly comes within the province of penal law. Imprisonment in such cases is of the nature of a punishment for misdemeanour, and should be applied by the authorities, and with the procedure appropriate for criminal law, and not for the private purposes, or at the caprice of the creditor. The latter purpose, the cession of property, it will be remembered, at the time of the inquiry by the Commissioners, could be fully effected only by the voluntary act of the debtor himself. The creditor could not have execution against copyhold lands, or more than half of freehold lands, or against stock in the funds or bonds, bills of exchange, or other securities, or any debts owing to the debtor. The imprisonment then operated as a mode of compulsion to extort from the debtor a discovery and cession to the creditor of the property, which the law refused to give him by a more direct process. It was a mere measure of justice to the creditor so long as this property was withheld from his reach, to give him some resource or hold over the debtor for obtaining it. The process of duress by imprisonment, however, was very inefficient, since debtors might decline to purchase liberty at the expense of their property and means of subsistence; and many preferred spending their property in prison, where they could purchase every luxury, even occasional liberty included, to going out empty into the world. This purpose of imprisonment is, at the present day, entirely superseded by the modern alterations in the law which render all the property of the debtor, of whatever kind, equally amenable to the process of the judgment creditor. We are fully justified, therefore, in considering that the limited purposes for which the commissioners advised the retention of imprisonment are, or may be, more adequately and appropriately secured by other means, and that their opinion may be interpreted at the present day as a recommendation of a total and unqualified abolition of arrest and imprisonment for debt.

We might further enlarge on the numerous minor arguments against imprisonment for debt, such as the useless expense to both parties, the waste of resources by the imprisoned debtor, the indirect evils it produces, the unproductive cost to the country, and the like; but all these have been so often enforced, and are so clearly recognised, that it is sufficient here merely to refer to them; our object now being rather to call attention to the present state of the question, and the necessity for a speedy solution. The time has at length arrived when a decisive step must be taken. The legal relations of debtor and creditor are to be subjected by the Legislature to a thorough re-construction, with a view to a complete and permanent settlement; and the question cannot be avoided, whether our insolvency law shall henceforth be restricted to the direct objects of its existence, namely, the cession, realization, and distribution of all the property of the insolvent, or shall continue to be complicated, encumbered and confused with elaborate proceedings and contrivances for evading the direct and primary consequences of the law of final process against the person?

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF CHANCERY.

(Before Vice Chancellor Stuart.)

Dec. 4.—Draper v. The Manchester and Sheffield Railway Company.—In this case orders had been obtained for production of documents by the defendants to the plaintiff, his solicitor or agent. The plaintiff's solicitor, in company with a public accountant, attended at the office of the defendants' solicitors for the purpose of inspecting the documents. The defendants' solicitors, however, refused to permit inspection by the accountant; and the plaintiff now moved that such inspection by the accountant might be ordered. It was contended on the part of the defendants that a professional accountant could only be employed under an order made upon a special application.

The Vice Chancellor said that the question was whether under the order that the solicitor or agent should be at liberty to inspect documents, a professional accountant would be at liberty to attend as agent. In his opinion, there was no rule of the Court which precluded a litigant who had obtained the ordinary order for production of documents from having the benefit of the assistance of an accountant. He thought, therefore, no objection could be made against an accountant as agent.

COURT OF QUEEN'S BENCH.

(Before Lord Chief Justice Cockburn, Mr. Justice Hill and Mr. Justice Blackburn.)

Nov. 22.—In re ——, an attorney.—The facts of this case are stated *ante*, p. 4. An application was now made that the rule to shew cause obtained at the commencement of the term to strike the attorney off the rolls, should be made absolute on the ground that the attorney had written a letter to the applicants stating that he did not intend to show cause against the rule.

The Court made the rule absolute.

SESSIONS HOUSE, Clerkenwell.

At a meeting of the magistrates of the county of Middlesex held on the 29th ult. it was decided by a large majority, that all sittings of the court for criminal and county business should in future be held at the Sessions House, Clerkenwell-green.

COURT OF COMMON COUNCIL.

Thursday, Nov. 6.—The Sheriff's Court.—Mr. Deputy Fry, Chairman of the Officers and Clerks Committee, presented a report from that body, recommending certain alterations in the fees taken at the Sheriff's Court, and an application for an order in council extending to the court the Bills of Exchange Act. He added that the proposed application had been suggested by Mr. Kerr, the judge of the court, with a view to assimilate the jurisdiction and mode of procedure to those of the metropolitan county courts.

The report was at once agreed to.

Central Criminal Court.—Deputy Fry presented a report from the Officers and Clerks Committee, recommending the entire abolition of the fees received for admission to the galleries of the Central Criminal Court, and suggesting certain regulations for the admission of the public in future. The report stated that the gross receipts taken for admission to the galleries in question during six years amounted to 911*l.* odd, and the attendant expenses to 269*l.*, leaving 642*l.* It had been the immemorial custom to apportion the net profits amongst the Lord Mayor for the time being, the sheriffs, and the swordbearer—the share of each amounting on an average to about 35*l.* a-year. The Court expressed its approval of the abolition of the fees in question. Some discussion ensued with regard to the admission of the public in future, but substantially the report was adopted.

The Court then adjourned.

During the sitting of the Court of Exchequer last week and while the jury had retired for a few minutes for refreshment, a coat belonging to one of the jurors was stolen from the jury box, and a very shabby one left in its stead. Exchanges of hats, coats and umbrellas are of common occurrence in our courts of law; and having regard to the circumstance that the things left behind are invariably of a very inferior description to those taken away, it is extremely doubtful that these exchanges are the result of accident.

Recent Decisions.

[*Equity, by* J. Napier Higgins, Esq., *Barrister-at-Law; Common Law by* James Stephen, Esq., LL.D., *Barrister-at-Law.*]

EQUITY.

Joint Stock Company—Acts ultra vires—Amalgamation—Ratification.

Re the Era Assurance Company; Williams's Case, V. C. W., 9 W. R., 67.

Two very important questions arose and were decided in this case. It was decided in the first place that where the deed of settlement of a joint stock company does not contain any provision enabling the company to effect an amalgamation with another company, such amalgamation cannot be accomplished so as to transfer the liabilities of the company attempted to be amalgamated; and in the second place it was held that although there had been a special general meeting which approved of an agreement for amalgamation, yet that was insufficient to confer the power which was wanting in the deed, so as to affect the shareholders with the liabilities of the amalgamated company.

The present case is the first in which it has ever been definitively decided that a company, without power in its deed to do so, cannot accept a transfer of the business and liabilities of another. In the *Sea, Fire, &c., Society* v. *Port of London, &c., Society* (Ho. of Lds., 6 W. R., 24), this question was raised; but the case being decided upon another point, it was not necessary there to decide the question. Lord Cranworth, however, in delivering his opinion, expressed himself to the effect that such a transaction was one in which "no company would be justified in engaging, because it certainly cannot be said to be within the ordinary scope of any company to purchase the goodwill of another company."

The second question which was mooted before Wood, V.C., is one perhaps of greater difficulty than the first. His Honour is reported to have said that "when an act is once established to be *ultra vires*, no meetings of shareholders, however numerous, can bind any one dissenting shareholder." This, however, is to be taken in connection with the context which would appear to limit the rule to acts opposed to the constitution of the company, and which it could not legally perform in any manner; for he says, "It was never intended to be laid down that a company formed for one purpose could bind the shareholders to acts not within the purpose of the deed." This limitation of the rule brings it well within the reported decisions applicable to the question; but it leaves open the particular question involved in this case, namely, whether the acceptance of the transfer of the business of another company of the like nature, subject to certain liabilities, is or is not an act within the purpose of the deed constituting the company for the purpose of procuring such business.

As to confirmation by the shareholders, his Honour observed that "no case of laches which could be imputed to the general body of shareholders had been made out; they might in cases of infancy and the like be *de facto* ignorant, while *de jure* they were only bound to know that to which they were held by their deed." A similar question arose in the *Sea, Fire, &c. Society* v. *The Port of London, &c. Society*—namely, as to the effect of the former society taking the business and receiving the premiums of the latter—upon which Lord Wensleydale observed, that "it is more than questionable whether the company is liable for the receipts; for the mass of shareholders have this protection—that they can be liable only through the act of their directors, acting under the authority of the deed and the Act of Parliament. It is a captivating argument for a jury, and they are very often misled by it in these cases of joint stock companies, and likely to produce injustice, that the company have had the benefit of the plaintiff's goods, or service, or money; whereas for the purposes of contract, the company exists only in the directors and officers acting by and according to the deed; and by the statute law the company is no more liable than a corporation by charter for the act of one or more of its members, who are distinct persons by law."

COMMON LAW.

Poor Law—Pauper Lunatics, Removal of.

Strand Union, Respondent, v. *St. Giles'-in-the-Fields, Appellant*, 9 W. R., Q. B. 52.

For the litigation in this case, the framers of the Act 11 & 12 Vict. c. 111, seem to be chiefly responsible; as they neglected to insert some words essential to the clearness of its meaning. The first section of that Act repealed a clause on the same subject, viz., the status of a pauper's family with respect to the cost of their maintenance and their place of settlement, which was contained in the 9 & 10 Vict. c. 66; and while substituting an amended enactment, did not proceed to incorporate the new provision into the former Act, by providing that the two should be read together. Such being the course of legislation with regard to paupers generally, there came a still more recent Act (16 & 17 Vict. c. 97) which dealt with the costs of maintaining a pauper *lunatic*, and directed him to be maintained out of the common fund of the union, provided that when sent to the asylum he was exempt from removal to his parish "by reason of some provision in the 9 & 10 Vict. c. 66." Now the only provision which could so exempt him was that one which was repealed by 11 & 12 Vict. cap. 111; and therefore it was argued on behalf of the union to which the lunatic in question had been sent to be maintained, that he did not come within the terms of the 16 & 17 Vict. c. 97 at all. The Court, however, said that the intention of the Legislature must have been that the 9 & 10 Vict. c. 66 should be read in all respects as if the provision substituted for the first section by the subsequent Act, had been originally inserted in the former Act; and that the lunatic therefore *was* exempt by reason of a provision in 9 & 10 Vict. c. 66 within the meaning of 16 & 17 Vict. c. 97; and that the costs of maintaining him did, therefore, fall on the common fund of the union. Information as to the manner in which the two first of the above statutes bears upon the status of irremovability in another point of view, namely, with regard to the *inheritable* quality of such status will be found in the case of *Reg.* v *Elvet** (7 W. R., Q. B. 586; 29 L. J., M. C. 17).

Magistrates—Liability of—Allegation of Malice.

Somerville v. *Mirehouse*, 9 W. R., Q. B., 53.

The all-important question, with reference to his own interests, for a justice of the peace to determine, who is called upon to make an order, is, whether the matter with which he is about to deal is one which is, or is not, *within his jurisdiction as a justice*, for if it be, then (provided he is acting *without malice*) he is absolutely safe by virtue of the clause recently passed for his protection in 11 & 12 Vict. c. 44, s. 1. This provision declares that in any action brought against a justice in respect of a matter within his jurisdiction as a justice, the declaration shall allege that the act was done maliciously, *and* without reasonable and probable cause. And that if such allegation be not proved at the trial, the justice is to have a verdict. The present case shows that the omission of such an allegation also makes the declaration demurrable—a fact which enables the justice to put an end to the proceedings as soon as he is served with the declaration, and without waiting for the trial. But though this seems the only point decided in the present instance, the case affords a useful opportunity to suggest that in a matter within a justice's jurisdiction, and in respect of which he has acted without malice, he will be protected, although the defendant should be in a position to allege in the declaration that the justice had acted without reasonable and probable cause, provided the ingredient of *malice* was wanting.

It is also observable that a magistrate when acting, as he sometimes does, in a *purely ministerial*, and not in a judicial capacity (see per Lord Denman, *Linford* v. *Fitzroy*, 13 Q. B. 245), he is responsible for the legality of his acts, even though no malice can be shown; for, in such cases, the matter does not come within his jurisdiction as a *justice*. And further, it should be carefully borne in mind that the question of jurisdiction or no jurisdiction is sometimes a matter of nicety; and that the law requires justices to know the extent of their jurisdiction. As to what class of cases are within a justice's jurisdiction, the following recent cases may be consulted (among others) with advantage—viz., *Barton* v. *Simpson* (20 L. J., M. C. 1); *Ratt* v. *Parkinson* (*ib.* C. P. 168); and *Newbould* v. *Coltman* (6 Exch. 189).

Highway Act—Indictment for Non-Repair.—5 & 6 Will 4, c. 50, ss. 94, 95.

Ex parte Bennett, 9 W. R., Q. B., 54.

This case supplies an important qualification to the rule laid down by the Court in *Reg.* v. *Arnould and Others* (8 Ell. & Bl. 550). That was a decision under the Highway Act (5 & 6 Will. 4, c. 50) the 94th section of which is to the following effect: "that if any highway shall appear to be, on the sworn information of any witness, out of repair, then the person chargeable with its repair is to be summoned to attend at a special sessions whereat the justices (either on the report of a competent person

* See 3 Sol. J., p. 796.

or on their own view) may inflict a penalty, and order the repair to be made." And by the 95th section, if at such special sessions the liability to repair is denied by the party charged, the justices are to direct an indictment at the next assizes or quarter sessions to try the question. Now the case of *The Queen* v. *Arnould* decided that, under such circumstances, the magistrates have no discretion; but are bound to order an indictment. The Court remarked that it would perhaps be better that the magistrates should be able to make such order dependent upon the fact of there being any person chargeable with the repairs in question; but that the words of the Act were too strong to admit of this construction.

Acting upon this decision, the applicant in the present case applied for a rule requiring certain justices to order an indictment to be prepared in respect of the non repair of a certain road; but it appeared that the road in question had been already determined by the verdict of a jury not to be a "highway" at all, and consequently not to be within the Highway Act at all. The Court held that in such a case, viz., where a road out of repair was denied to be a highway, the duty thrown by the Act on the justices does not arise; and the application was consequently refused. Hence the rule is, that where a *road* is out of repair, and a person charged with liability to repair the same refuses or neglects to do so, the justices, on being satisfied that there is no question with regard to the road being a highway, are bound to order an indictment to be prepared.

Correspondence.

PARLIAMENTARY DRAFTING.

As the diminution in size of our future statute books will depend much upon the withdrawal of all bounties upon verbose legislation, and the remuneration of the bill drawers upon some system which experience has recommended, it appears to be an obvious expedient, that bills should emanate from the different departments of the Government, or its subordinate machinery in the first instance, and, then be subjected to ulterior review. New enactments would thus be likely to meet the recognised defects, and to be free from unnecessary ordinances; while the ulterior revision is calculated to lop off the excrescences of too special views. The Board of Trade in 1853, and the Customs in 1854, had their bills of those years prepared in their respective departments, which bills have since, as I am informed, continued unaltered. This is a strong proof, that to render laws practical, not only the suggestion of their principles, but the form of their legislative declaration, or diction, should emanate from the departments of Government. All the departments, probably, have on their legal staff a sufficient amount of legal and natural discernment to originate few measures or clauses that will fall under the scythe of an ulterior revision.

M. N.

WHAT WE MAY NOT DO WITH OUR OWN.

The most general application of the foregoing maxim is, perhaps, the denial to the citizen of a right to disobey the laws, although they are our own, or even to misstate them; such being *contra bonos mores*, to pass without severe censure. Yet, Mr. Bright, in his recent speech at Birmingham, and the *Times* of the 6th inst., re-echoing the voice of Mr. Bright with a hoarse murmur of denial, yet accepting the truth of his statement of legal facts, say, first, that "there is no such thing in England as the law of primogeniture," and, next, that "the laws of entail are not as they used to be." Lest the readers of the Journal should suppose, that our laws have been by a silent revolution metamorphosed into the contrary of their ancient, and indeed recent state, an express denial of both these statements is here ventured to be offered, with a regret that our eminent opponents consider, that law reform has already done such wonders, as their statements imply. As practice follows the law, primogeniture exists not only in law, but also in cases where the owner of the soil has made a will, that is, in fact, so that, in both cases alike, the eldest son receives the bulk of the freehold property. This the *Times* admits; which extenuates the error of its legal judgment. The laws of entail are also precisely as they were settled by the Statute De Donis, and Faltarum's case. Land can be tied up now, so as to be unsaleable in fee, for precisely the same time that it could have been removed from the market and the laws of political economy in the reign of Edward IV., viz., for a life or lives in being twenty-one years, and nine months, the last period being a late judicial donation. The fiction of common recoveries, suggested by Faltarum's case, and in effect then decided, as an adequate barring of an entail and a restoration of the entailed land to the uses of commerce, has doubtless been abandoned for the simpler process of the enrolment of the deed barring the entail. The enrolment, however, is as unnecessary and inexpedient a device, in point of principle, though indispensable in the present state of the law, as the ancient systems of recoveries, fines, and warranties. The Act for the abolition of these strongholds of technicality did not abrogate or alter the law of entails, nor even the principle on which the barring of entails was accomplished. This principle appears to have been, and is, that tenants in tail might, if they choose, become tenants in fee, but should not do so, without a little trouble, unnecessary as it appears in any view, except as a homage to the majesty of the law, and a proof of obedience to her dictates, even when troublesome, or apparently anile. Mr. Bright, and the *Times*, therefore, are premature in anticipating as a *fait accompli* what, at the present rate of legal progress, is likely only to happen, if ever, a century from the present date.

ZENO.

HINTS TO THE PROFESSION.

These are days of professional struggle; and to no profession more so than that of a solicitor. When our difficulties arise from the ordinary incidents of fair competition, none can complain; but when to these are added the unfair inroads on profits already diminished,—of men not so weighted for the encounter as we are—of men who are not subjected equally to taxation, and of whom the same educational acquirements are not expected—there need be little apology to any one, still less to the *Solicitors' Journal* for calling attention to the present state of the profession, and attempting to suggest a remedy for it.

Many of our difficulties are matter of notoriety. Estate agents, land surveyors, accountants, debt collectors, and trade protection societies, all dishonestly divert from us fair profits and earnings. They actively injure us in two ways. In one, by undertaking to do what is really attorneys and solicitors work; in another by continually representing to the public, the danger of going to lawyers, who will to a certainty, as their interest is, lead their clients into lawsuits. Agents are common everywhere, who draw agreements, even leases, assignments, call their employers "clients," and in a score of ways, act as and charge as solicitors; but are put to little expense for education, or professional training, and are not liable to certificate duty, or taxation of their bills. This is all trite information. But it proves, and our complaining admits it, that these *pseudo* lawyers have in great part beaten us real ones in competition for the public favour. How have they done this? To the minds of many who have thought over these things, the reason seems to be, that agents profess to charge a fixed per centage for their remuneration on all sums passing through their hands. This is doubtless a profitable and handsome recompense. Still the mode of estimating it recommends itself to the employer. He thinks he is prepared for, and knows the worst the matter can cost him. He has not to wait anxious months before he gets the hated bill of costs, which item by item disgusts him by its reminder of annoyances and reverses he would gladly forget. What is our remedy? Upon this I merely write to evoke opinions, and so obtain the best suggestions. I venture to think, that though at one time it may have been thought so, it would not now be derogatory to the profession to require for its remuneration in the collection of debts, rents, and all other matters presenting a money standard of calculation, a per centage on the amount. Scriveners were, and are expressly by custom and law allowed to do so, and what solicitor will deny he is a scrivener? Perhaps, too, it might be made practicable and customary to consult a solicitor at a single interview, and then and there pay his fee. An announcement of such modes of doing business as I have indicated (if sanctioned by leading members of the profession) would rally many a wavering client to his old adviser. Besides, if there is one thing more in arrear than another with a soliciter, it is the making out of bills. Either he must employ at great expenses persons qualified, or himself labour to draw up his charges in fitting phraseology and consistency of time and fact. All of us know it to be a laborious business. This would be got rid of almost entirely, with its concomitants of taxation, by the change advocated. I do, then, beseech the attention of all our professional brethren to the consideration of this matter Of the higher, because it deeply concerns the lower, of the lower because it is becoming to them a question of mere existence.

A SOLICITOR.

THE LAW OF JUDGMENTS (23 & 24 Vict. cap. 38.)

In your article of the week before last, you very ably illustrate the relations of the old and new law as to notice and no notice to purchasers and creditors, and how they are variously affected thereby, and the inharmonious and inconsistent legislation thereon. In your remarks on the recent enactment, you say that there is nothing to prevent a creditor re-registering his execution every three months; I would suggest that if there is nothing to prevent it, the Act contains no provision for re-registering, and appears to me intended to deprive a creditor of any remedy against a purchaser after three months, unless the writ of execution is put in force.

You think, that unless the creditor could re-register the execution, he would forego his claim altogether, you mean, of course, against purchasers; there is nothing to prevent a creditor at any time after such three months from enforcing his claim against the estate of his *debtor;* after three months, a purchaser would not be bound unless the execution was enforced before the execution of the conveyance and payment of the purchase money. A purchaser would be bound to satisfy an *elegit* tenant, although more than three months had elapsed since the registration of the execution. Several questions arise in considering the probable operation of the Act as regards enforcing executions.

1st. A creditor puts a writ of execution in the hands of the sheriff, who returns—*nihil*:

Qy? Is this putting the writ in force in compliance with the requirements of the Act, if so, is the new law satisfied, and would the judgment have the full effect and force of the previous law, as though the 23 & 24 Vict. c. 38, had no existence, and a purchaser be affected by the registered judgment, although the execution may not have been registered within three months before the completion of the purchase?

2nd. The sheriff not finding sufficient to satisfy the judgment debt out of the real and personal property of the defendant:

Qy? Would the judgment remain a charge for the balance on the real estate of the defendant, either possessed at the time or after acquired?

3rd. If a writ of execution is issued in one county, would it affect a purchaser of property situated in another county?

4th. Is a writ of *elegit* only intended by the Act? As leasehold property can be extended under a *fieri facias*, would not a purchaser of leaseholds be affected by the registration of such a writ? and would the issuing and registering of a *fieri facias* affect a purchaser of freeholds, as the writ is not defined by the Act?

Some light thrown upon the above queries would greatly assist in the understanding of the Act, and help to determine the position in which judgment creditors and purchasers stand to each other.

Had it been the intention of the Legislature to limit the time in which a creditor should enforce his judgment against the lands of his debtor in the hands of a purchaser, might it not have been provided that a purchaser should not be affected by a judgment after five years (or such a period as might be reasonable to enable a creditor to procure satisfaction of his judgment); this would prevent the difficulty of compelling a creditor to enforce his execution forthwith, which will frequently press hard upon the debtor.

It is well known that in the majority of cases where the creditor is unable to procure satisfaction of his judgment, he registers it on the chance of what it may bring him without having any exact knowledge of his debtor having any real property, and by so doing often obtains satisfaction of his claim. That a creditor should be so helped is reasonable enough, and we should be careful to prevent any collusion between fraudulent debtors and purchasers whereby a creditor might be evaded. You observe, "Why should not judgment creditors be protected as purchasers by those who profess to have the interests of purchasers in view?" and seem to think that an assimilation to the Irish Judgment Acts would be an improvement; and it appears this could be effected by making the register notice to all, which would place the law of judgments on a more uniform and positive footing. The 3 & 4 Vict. c. 82, provides that notwithstanding a purchaser having notice of a judgment, he shall not be affected thereby until such judgment is registered; this seems intended to remedy difficulties about notice; but to render the enactment more perfect, the converse should have been enacted, that when so registered, it should be notice to all, and have protected the creditor as well as the purchaser. It is the general practice for purchasers to make these searches, and it is not unreasonable to surmise that when they are omitted it may be that the purchaser purposely endeavours to prevent notice being proved against him, although it is a dangerous proceeding, since slight circumstances may fix him with constructive notice.

In relation to incumbrances on land, could not mortgages be registered in the name of the mortgagor, and in a simple and inexpensive way, similar to judgments (probably the payment of a shilling registering-fee would pay the expenses of keeping a register)? Such register would greatly help to prevent a variety of litigation amongst mortgagees without notice.

It would save expense and complexity if a purchaser was bound by a judgment if registered in the Common Pleas, although not registered in the local registers (Middlesex, &c.) At present a creditor to charge property in a registering county has to register in the local office, for which purpose a memorial is required verified by an affidavit, and the memorial and affidavit must be stamped, the memorial must also be certified to by a master of the court in which the judgment has been entered up, a costly affair, and unnecessary if the simple memorandum as is the practice in the Common Pleas is sufficient. In addition to the local registering the creditor should also comply with the later act and register his judgment also in the Common Pleas; and if he wishes to take advantage of the best security he can obtain, he would of course do so, to get a charge on any property his debtor may have in an unregistering county. And now by the new Act he must in all cases register his execution in the Common Pleas. This threefold registering is not either of any benefit to a purchaser, who has to search twenty years in the local office, and if he finds a judgment there, the particulars necessary to identify the defendant not being registered, he is compelled to make troublesome and sometimes unsatisfactory inquiries. A prudent purchaser would also search the Common Pleas register it being doubtful whether a purchaser with notice would not be bound by a judgment registered there, although not registered in the local office, and would avoid being so placed that notice might be proved against him. It would be an improvement were the necessity for this double registering and searching prevented. Also if the expense of enforcing a writ of *elegit* were lessened, these matters should have some consideration in future legislation. Complications of this nature are quite sufficient to render inoperative and burdensome laws, that if carried out by a more simple machinery and certain action would be equitable and beneficial.

I have thrown off these remarks somewhat loosely, but with a view to provoke some further public discussion on the subject, and help to make another change, should one take place, more satisfactory and so far as possible final. Q.

RIGHT OF TRUSTEES TO BE RECOUPED IN RESPECT OF BREACH OF TRUST.

In the proposed suit by one of the family against the trustees and the husband, the Court would perhaps direct that any property taken by the husband under the settlement should be liable to make good the breach of trust (see *Clive* v. *Carew*, 7 W. R., 433); property taken by the wife to her separate use was held liable for the value of a pearl necklace improperly sold by her; but the Court would give no relief to the trustees against the husband for the breach of trust committed by the trustees. The remedy of the trustees against the husband would be at common law by an action to recover back the money lent. C.

BAR ETIQUETTE.

I am much obliged by your insertion of my letter on "Bar Etiquette" in your journal of the 3rd ultimo. By a somewhat curious coincidence, Mr. Shaen's paper on that subject was also printed in the same number. From it we gather, that the Oxford Circuit is not the only one on which the suitors are fleeced avowedly and openly, for the sake of giving guineas to young gentlemen whose only title to them consists in the bare fact that they are junior counsel, and have done nothing whatever to deserve them.

Mr. Shaen informs us, that he sometime ago, being concerned professionally for a client, "and the case being a perfectly simple one, prepared only a single brief." Now mark the sequel,

"Conticuere omnes, intentique ora tenebant."

Or, to express the same idea less classically,—

"Silence! hush! shouts the crier, His Lordship is ready.
Now Jurymen, enter the box, and sit steady."

Scarce had the orator retained by Mr. Shaen commenced his speech, when a buzz of, "Where's your junior?" arose amongst his hungry compeers, who pressed their claim so pertinaciously, that at length the brief-holder explained that Mr. Shaen must really "Give him an assistant labourer, as he (the counsel) was not allowed by the etiquette of the Bar to open the pleadings to the jury." Mr. Shaen's objections to this absurd extortion were urged as vehemently and as ineffectually as my own had been, but he at length succumbed, having in fact no choice left him. Still Mr. S. in one respect was less unfortunate than I had been, since I, even to this day, am ignorant whether my "guinea fee and tail brief," did or did not eventually become the spoil of the junior counsel who, *par excellence*, had done the least—if to do less than nothing at all be possible—to merit them; while on the other hand, in Mr. Shaen's case, "the Bar, by rapid self-examination, succeeded in ascertaining who was the Junior," and that point settled, the Benjamin of the circuit, blushing, hesitating, and recalcitrant, was "pushed up to the side" of the gentleman who had been originally retained, and thus conveniently located, the two gownsmen—

"Both pleading of one cause, both in one key,
Droned o'er the brief, due but to one of them,
As if their hands, their sides, voices, and minds
Had been incorporate."—

"Awkward enough I grant, but surely not oppressive," cries the uninitiated reader; "who save themselves were prejudiced by this droll exhibition?" Alas! "one brief, two fees," is it should seem, *de rigeur*; for this "bar etiquette," continues Mr. Shaen, "increased the amount of costs by some few pounds without the slightest corresponding advantage to the client."

But, for this last remark, which tells indeed an ower true tale, these exhibitions would have been ridiculous, but nothing more, since if the judge did not consider them disgraceful, Mr. Shaen and I—involuntary actors in them—had no occasion to beg his lordship's pardon "for making of his court contemptible." The whole system of "tail briefs," and needless fees is, however, based on wrong, since courts are constituted to redress the grievances of suitors, and not to swell the money bags of counsel.

Mr. Shaen proceeds in his very valuable paper to dilate on certain other points of etiquette, observed with more or less exactness amongst the bar; but these, however frivolous he and I may think them, affect the long robe *inter seipsos* only, the public being uninjured, and the attornies having nothing at all to do with them. At first sight, indeed, those minutiæ of circuit regulation, which forbid a barrister to dine or walk during the assizes with an attorney, or to dance at an assize ball with an attorney's daughter, seem supercilious; but the real fact is unquestionably, that these rules are barriers planned not to guard the counsel from the intrusion of attornies, but to save these latter from being torn to pieces by the rival assiduity of contending would-be-brief-holders. Some few practitioners may indeed be ruffled at what they call the hauteur of the long robe.

"Alas! the Big-wig's *gratitude*
Hath rather set me mourning."

As a rule, the barrister who rises by servility will, when position is obtained, be overbearing. No doubt. Yet this, so long as we have briefs for scarce one-twentieth of the expectants, may be indeed a grievance; but we can remedy it, or it will cure itself—and, after all, it is but "turn and turn about."

"Folks change their manners as their fortunes change."

Gil Blas loved passionately a lively little actress attached to the royal company of comedians at Madrid, but who had originally been a *soubrette*. "Now, prythee, Laura!" cried Signior de Santillane, "why all these airs? For what do you take yourself; and why so uppish always in the afternoon?" —"I split the differences of my daily occupations," replied Laura; "I am, I own, a waiting-maid every morning for our *prima donna;* but then o' nights, I am alternately a Queen, an Empress, and a Vestal Virgin, or even, now-and-then, a Goddess; thus, on the average, my dear Gil Blas, I am, at least in my own estimation—let me see—a Marchioness, and as a Marchioness I will, *when I wear my silk gown*, be treated."

The rule forbidding circuiteers to enter an assize town before the afternoon of the Commission-day, though it may be, and doubtless is, at times an inconvenient one; seems, however, to be based upon the principle of "Let us all start fair!" and is, unquestionably, of very ancient date. Roger North informs us, that when his brother Frank (afterwards Lord Keeper Guildford) rode the Norfolk circuit, the whole bar got drunk at Colchester, and Frank, especially, so very tipsy, that he insisted, in spite of argument and remonstrance, on riding full drive into a horsepond. Here, his brethren acting on the principle of "The devil take the hindermost," left him, and scuttled away in the hope of anticipating a stray brief or two, while North's clerk—"at that time, fortunately, sober"—extricated his master, and with no small difficulty brought him round again. The first use which Frank North made of his recovered senses was to gaze around and cry out anxiously, "Where are they?" and that fact ascertained, to clamber awkwardly upon his nag, and gallop off after his briefs, fees, and learned brethren.

Law Club, London. B. Blundell, F.S.A.
5th December, 1860.

The Provinces.

Warwick.—An action was lately tried before Mr. F. Dinsdale, the judge of the county court, Warwick, which was brought against the London and North Western Railway Company by a dealer in china for damage done to certain goods while in their custody. It appeared that the goods were brought to Warwick by the London and North Western Railway Company, but that they had in the first place been consigned to the North Staffordshire Railway Company. The former company relying upon previous decisions resisted the claim on the ground of the consignment not being to them but to the latter company, with whom, alone, they contended, rested the responsibility of fulfilling the contract. Mr. Dinsdale, however, decided that since the damage had clearly been occasioned by the negligence of the servants of the London and North Western Company the latter were liable for the damage. He accordingly directed a verdict to be entered for the plaintiff, leaving the two companies to settle the question of contract between themselves.

Ireland.

Legal Education—New Rules.

The education of attorneys and solicitors has at length met with some attention on the part of that dignified body the Benchers of the King's Inns; and several new rules have been promulgated, and are subjoined. It should be explained that the admission of solicitors in Ireland is regulated by ancient usage, by the benchers, and whether this was an encroachment, as some allege or not, it would be hopeless to attempt to wrest this jurisdiction from the hands which have so long held it. The control of the benchers over the solicitors' branch of the profession has already been fully described in this journal. [S. J.. Dec. 17, 1859, p. 102.]

The only rule of the new code that seems peculiarly open to objection is that requiring that the new professor of law shall be a barrister of some years' standing. There is no reason in the world why a solicitor, if otherwise possessed of the requisite fitness for teaching articled clerks, should be excluded by the terms of the rule. We are surprised that the Lord Chancellor, Lord Justice, and other eminent persons forming the committee of benchers from whom these rules emanated, should have assented to so ungracious and unnecessary a restriction.

Rules.

"1. That from and after the 1st of January, 1861, no person seeking to be bound apprentice to an attorney or solicitor, shall be required, in his petition for that purpose to be addressed to the benchers, to make any statement with respect to his education or literary qualifications; nor shall he, or any person on his behalf, be obliged to make affidavit in respect to the matters aforesaid.

"2. That from and after the 1st of January, 1861, every person who shall seek to become the apprentice of an attorney or solicitor, shall, previous to the making of the order of permission to become bound, pass an examination in the following course of instruction, that is to say;—

Latin—Cæsar's Commentaries, first book; Sallust; Virgil first three books of the Æneid.

History—Liddell's Roman History; Smith's History o Greece; Abridgment of Hume's History of England.

Arithmetic—Galbraith and Haughton's Treatise; or The Theory and Practice of Arithmetic, as used in the national schools.

Book-keeping—The treatise used in the national schools.
Geography—Sullivan's Geography Generalized.
English Composition, and Writing from Dictation; in which penmanship and orthography will be taken into consideration.

"3. That such preliminary examination shall be held at the King's Inns' lecture-room in the week next previous to each term, before the Legal Education Committee, the Moral Examiners of the three law courts, and the president and vice-president of the Incorporated Society of Attornies and Solicitors of Ireland, who shall be specially summoned to attend; and it shall be conducted by a fellow or scholar of Trinity College, or some other competent person, for that purpose to be selected by the Legal Education Committee All petitions and memorials shall be presented at least seven days before the commencement of the term.

"4. That the names of the several persons who shall have passed the said examination, shall be posted in the hall of the four courts, in the Solicitors' Buildings, and on the door of the lecture-room at the King's Inns.

"5. That, for the improvement of the legal education of persons seeking to be admitted attornies or solicitors, there be instituted a professorship of law, specially adapted to the wants of that branch of the legal profession.

"6. That such professorship shall, from time to time, be filled by *some member of the Irish bar, of not less than six years' standing*, to be elected by the benchers; and that he shall hold office for three years.

"7. That the salary of such professor be £100 per annum; and that his duties be such as shall, from time to time, be prescribed by the Legal Education Committee.

"8. That, with a view to create a fund for liquidation of the expenses occasioned by the foregoing arrangements, the fee of £3 3s. shall, in addition to all other fees, be paid to the treasurer of the King's Inns by each person hereafter seeking to become bound apprentice to an attorney or solicitor.

"9. That it be recommended to the judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, to make rules or regulations in their respective courts, to the effect that, after the last day of Michaelmas term, 1860, no sum of money shall be payable by any person seeking to be admitted an attorney, as a fee to or for the benefit of the Moral Examiners of either of the three law courts, appointed pursuant to the 13th & 14th Geo. 3, c. 23; but that the fees which would otherwise be payable to the Moral Examiners by persons already bound, shall be paid to the treasurer of the King's Inns.

"10. That an examination in law (including the practice of the courts, and the general duties of an attorney and solicitor) shall be held in the week next previous to each term; at which the apprentices who shall have then actually completed the period of their apprenticeship, or who shall be within six calendar months of such completion, may present themselves.

"11. That such examination in law shall be conducted by the aforesaid professor, and some one of the Moral Examiners to be selected for the purpose by the Legal Education Committee, in presence of the benchers, the Moral Examiners, president, and vice-president, as aforesaid, all of whom shall be specially summoned to attend.

"12. That no person hereafter to be apprenticed shall be admitted an attorney or solicitor who shall not have passed the foregoing examination in law, unless by special order of some one of the superior courts of law or equity.

"13. That prizes upon a scale hereafter to be determined, and also certificates of merit, may be awarded by the Legal Education Committee, to such persons as shall have distinguished themselves at the examination in law, and whose morals and qualifications for the profession shall have been approved by the Moral Examiners.

"14. That the names of the several persons who have passed the said examination in law, arranged in alphabetical order, shall be posted in the hall of the four courts, in the Solicitors Buildings, and on the door of the lecture-room at the King's Inns; and that upon the list of persons so to be posted there shall be notified the prize or other distinction of merit to which any of such persons may have become entitled."

COMMON PLEAS—MISS AYLWARD'S CASE.

All readers of newspapers are by this time aware that Miss Aylward, a Roman Catholic lady of respectability, has been committed by the Court of Queen's Bench for contempt in giving insufficient replies to certain interrogatories put to her on the subject of the part she took in the abduction of some children. The children have not as yet been recovered, and as Miss Aylward's replies were unsatisfactory, she was sentenced by the Lord Chief Justice, the other members of the court concurring, to be imprisoned for six months in Richmond Penitentiary. This happens to be a criminal prison used for male offenders only, the judges, as also the other persons in court, having been, it seems, unaware of the fact that female offenders are incarcerated in a different building. To the latter place, however, Miss Aylward was speedily transferred.

Her next proceeding was to apply to the full Court of Common Pleas for a *habeas corpus*, on divers grounds. An array of counsel appeared, and argued for her that her commitment was illegal by reason of the mistake made in the place of imprisonment. The case of Lieutenant Allen—released last week from Millbank—was cited as proving that the place of punishment named in the sentence is material, and cannot be altered or varied from. It was also contended that "contempt" is a civil and not a criminal offence, and that a person committed for contempt ought to be lodged in the Marshalsea or debtors' prison, and not in a gaol or criminal prison. The arguments having concluded—

MONAHAN, C. J., remitted the prisoner to her place of confinement, the Court unanimously holding that the Court of Queen's Bench had full power to imprison in any place it judged best; and that its decision could not be reversed by another court of co-ordinate jurisdiction.

Right Hon. *A. Brewster*, Sir *C. O'Loghlen, Q.C.*, *J. O'Hagan*, and *Devitt*, with Mr. *Mooney*, attorney, appeared for the prisoner, and *McDonogh, Q.C.*, and *Brereton, Q.C.*, with Mr. *John Martin*, attorney, for the prosecution.

TALK OF THE FOUR COURTS.

It is stated that several gentlemen are to be called within the bar immediately; among them are Messrs. Charles Shaw, R. A. Exham, W. Sidney, and R. H. Owen. The *Evening Mail* gives some further "information," which can only be regarded as a playful hint, that her Majesty's counsel are already far too numerous. This authority states that when the new batch of silks is created, "the Lord Chancellor will at the same time, in compliance with a requisition numerously and respectably signed, call several of her Majesty's counsel back to their old estate at the outer bar!"

The Lord Chancellor's list of causes has already been gone through, and the Master's lists are also very light, consequently there is much complaining of the state of business, on the part of those practitioners who confine themselves to the equity courts.

Reviews.

A Treatise on the Principles of Pleading in Civil Actions; comprising a summary account of the whole proceedings in a suit at law. Being the sixth edition of Mr. Serjeant Stephen's work under that title, with alterations adapting it to the present system. By JAMES STEPHEN and FRANCIS F. PINDER, Barristers-at-Law. London: Stevens & Sons.

No edition of Mr. Serjeant Stephen's treatise on pleading in civil actions has been published since the Common Law Procedure Act, 1852. The very numerous decisions upon that statute, and the radical changes introduced by it into the system of common law proceedings, made it a difficult task to adapt by means of notes or slight alterations of the text the new system of pleading to a work intended to be a compendious account of the old, which was in many respects so different. The editors, therefore, while preserving entire large portions of the original work, have throughout made considerable alterations and additions, and hold themselves responsible for the whole; although the work is published as a new edition of the well-known treatise of Serjeant Stephen. The general plan of the editors, however, is very similar to that of the original author. There is, first, a summary account of the proceedings in an action from the commencement to its termination. Then comes a chapter on the principal rules of pleading—each rule being treated separately in distinct sections, and illustrated by reference to authorities, for the purpose of throwing light either upon the principles involved, or upon points of practice where they are concerned. The present treatise is admirably suited for students of the law who desire to have a

clear conception of the *principles* of the existing rules of pleading; and the style in which it is written is so pleasant as to make it really an agreeable book for any one to read—what can rarely be said of any law book.

The Magisterial Synopsis; a Practical Guide for Magistrates, their Clerks, Attornies, and Constables, in all matters out of Quarter Sessions; Summary Convictions and Indictable Offences, with their Penalties, Punishments, Procedure, &c., being tabularly arranged. By GEORGE C. OKE, Assistant Clerk to the Lord Mayor of London. Seventh Edition enlarged and improved. London: Butterworths.

Mr. Oke has long been appreciated by the profession as a writer, peculiarly well versed in magisterial law. His "Magisterial Synopsis," the work through which he first became so widely known, has been throughout the length and breadth of the country what it professes to be—a practical guide for magistrates, their clerks, attorneys, and constables in all matters out of quarter sessions. It will be seen that the work has already reached a seventh edition, the last edition having been got through very rapidly. In a work of this kind, and one, moreover, which has already received the best marks and tokens of the approbation of those for whom it was composed, it would be impertinent for us to affect any detailed criticism upon its merits. We need only say that the new edition is in excess of the previous one in point of bulk, to the extent of about one hundred and twenty pages, in which there is not an unnecessary word; Mr. Oke everywhere exhibiting his anxicty to compress the subject matter into the smallest allowable compass. The present edition, moreover, contains several new titles which are rendered important by the 20 & 21 Vict. c. 43, enabling the opinion of a superior court to be obtained in many new cases. Mr. Oke, in his last preface, remarking upon the startling proportion which statutes relating to the duties of the magistracy bear to the whole number of those enacted, observes "that the public general statutes on magisterial law which are added each year form on an average one quarter of the number of those passed. During the last session, as to which so much has been said and written, 42 of the 154 Acts passed related more or less to the duties of justices of the peace. In 1858, there were 26 out of 110; and in 1859, there were 32 out of 101." It is fortunate, therefore, that the demand for such books as the "Magisterial Synopsis" creates so quick a sale, as it is obvious that every two or three years the law relating to the jurisdiction of justices of the peace must require complete revision. The most useful feature in Mr. Oke's Synopsis, and what, no doubt, has made it a universal book of reference for magistrates throughout the country, is his original and convenient plan of arranging offences both summary and indictable in a tabular form, exhibiting at a glance the penalties, punishments, and procedure, with extremely intelligible references to the statute law, and to judicial decisions. Mr. Oke's tables of the criminal law are models of precision and ingenious arrangement.

Metropolitan and Provincial Law Association.

JUSTICE AND ITS MISCARRIAGES, WITH OBSERVATIONS UPON THE NECESSITY OF APPOINTING A MINISTER OF JUSTICE.

Mr. JOHN TURNER read the following paper at the Newcastle Meeting of this Association:—

There is nothing of more importance in all civilized countries than the pure and perfect administration of justice. It is in reliance on the protection which the law is presumed to give to every subject that the natural liberty to avenge personal wrongs and to redress injuries is abandoned, and the more rational appeal to lawfully constituted authority is resorted to. The protection of person and property by the law is the link which binds the subject in allegiance to the sovereign, and compels a willing submission to the payment of heavy and burdensome taxes to the State. If, therefore, justice is so indifferently administered that no one can rely upon it for protection—if it is so uncertain that it becomes a question whether it is not better to submit to wrong—rather than aggravate the evil by an appeal to tribunals upon whose decisions no certainty of justice can be expected, then, indeed, the primary object of all government is defeated; and whatever country is so situated, is reduced to a condition inferior to those less civilized states, whose laws give assured protection, without the "glorious uncertainty," which, to some extent, is the reproach of our system of jurisprudence. It is impossible to overrate the importance of this subject to professional men. Our living depends upon the confidence our clients place in courts of justice to redress their wrongs; and to the growing feeling of distrust in the sufficiency of existing tribunals may not unfairly be attributed some portion of the falling off in the practice of professional men which has of late years become so painfully manifest. It is desirable, therefore, that a calm investigation of our own judicial systems should be made, to see whether they fulfil the reasonable expectations of the suitor and the public. It would have given me great satisfaction had some person of more ability, and greater influence, brought this important subject under your consideration; but in the hope that other gentlemen will give the matter the benefit of their experience, I will endeavour to place before the meeting those circumstances which appear to me to show, that while other departments of science are pursued with success and benefit to mankind, that of law and justice holds but a doubtful position. It would appear that our lawgivers have been very sensible that the administration of justice is far from perfect—at least, this may be inferred from the great number of new laws, new systems of procedure, and endless changes which are constantly taking place; and if there were any prospect of amendment from such perpetually recurring alterations, neither the profession nor the public would have reason to complain of them. There must be something essentially wrong, which is not generally understood to call for so much change. If we appeal to positive law in the statute books, we certainly find imperfections, but not to an extent to account for the great distrust of law exhibited by suitors and the public;—and as the Common Law professses to have a remedy for every wrong it is not to that department of jurisprudence we must look for the evils which have created such distrust. We have our systems multiform and complex—our equity jurisprudence and its procedure—our common law courts and their procedure—our code of bankruptcy and insolvent law—our county court law, and, not the least important, our criminal jurisdiction. From each system complaints arise of imperfect justice, or rather of injustice, and the charge is the more mischievous from its generality. That vague term, "The Law," is always accused of being the real delinquent, the administrators of justice never being suspected of having any hand in the matter, and as a consequence changes of form and of procedure have been the chief object of law reformers. With the changes of procedure, however, there has been no abatement of complaints, and whether the fears of suitors are well grounded or not, it is certain that a vast number of persons avoid to the uttermost an appeal to courts of justice to redress their wrongs, and submit to what they deem to be injustice, rather than trust the result to an appeal to legal tribunals. What is the cause of this standing aloof? We have courts of appeal to correct the errors of judgment in inferior tribunals, and our judges are reputed to be the wisest, the most learned, and the most upright in the world. What, then, are those evils, which are so painfully felt that not only the great mass of the public abstain from resorting to courts of justice, but attornies and solicitors are constantly under the necessity of advising their clients to submit to wrong, rather than risk the greater evil of litigation? What are those evils which are so avoided? If the course of procedure is unexceptionable, and the judges above suspicion, what is there to avoid? I speak not only for myself, but I believe also the mind of the profession, when I answer these questions by saying, It is the great uncertainty which may attend the result of litigation,—the doubt that what appears a plain and simple case may never be understood, and that common sense, justice, and reason, may be set aside when the day of trial arrives. It is because I think that this impression upon the mind of suitors may be overcome that I have ventured to bring the subject before you for discussion. Our respect for the judicial office acts as a restraint upon anything like free discussion respecting the merits or demerits of particular judges; and it equally restrains us from referring to any of their decisions in a manner which can render them the subject of comment by others. That great and distinguished men do now adorn the bench as in times past no one can dispute, but that the greatest and wisest sometimes make mistakes is a fact known to every lawyer. Lord Brougham, in giving the judgment of the House of Lords in Cottle's case in August, 1850, attributes the errors of the judges as the result of *erring human nature*. "No judge," said his lordship, "ought to be ashamed after erring to acknowledge his errors, still less has a

court any reason for so misplaced a shame—so unseemly a reluctance to admit that the dispensers of justice are subject to the common lot of *erring humanity*." Admitting that no man is perfect, it is manifest there is a wide difference between the natural imperfection of man, and that species of conduct over which men have control. Every wrong committed may be attributed to the failings of "erring humanity," and to accept the imperfections of human nature as a reason for errors would absolve from all human responsibility. It is not, therefore, to the mere imperfection of human nature that the miscarriages of justice can be attributed. If the fact were so, the evil would be without remedy. I mean no disrespect to anyone when I say that the judges of England are like other men, with the same infirmities, and liable to the same influences. They, of all men in England, are the only persons whose position is irresponsible; and it is greatly to the credit of the judges that with so little control, justice should have been administered without any other complaint than that of uncertainty, and what a distinguished lawyer and statesman terms the common lot of erring humanity. That they are practically irresponsible is manifest from the laws which regulate the office of judge. Until the reign of King William and Queen Mary, the judges were appointed during the pleasure of the Crown, and were liable to be removed at the discretion of the Crown, on the advice of the Privy Council. After the death of Queen Mary it became necessary to provide for the succession of the Crown, in the event of there being no issue of the Princess Anne of Denmark. King William, in a speech delivered in Parliament, invited the consideration of his faithful commons to the subject, and a Bill was brought in founded on resolutions agreed to by that body. As the Bill afterwards passed (12 & 13 Will. 3, c. 3), it contained in the third clause, not only regulations relating to the succession of the Crown, but also the following provision:—"That after the said limitation shall take effect as aforesaid, judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them." This provision, which was to take effect after the death of the Princess Anne of Denmark without issue, was introduced into the Act without any record for the reasons which called for it; and it is probable that King William, whose speech has no reference to judges whatever, was not aware of the extraordinary limitation of prerogative which the Act entailed upon succeeding sovereigns of England. Those persons who defend this provision do so on the alleged grounds that it rendered the judges independent of the Crown, and is the foundation of liberty and the palladium of Justice; for judges are no longer subject to any improper influence of the Crown. I do not myself see the force of such reasoning—some of the greatest lawyers that ever lived held their commissions from the Crown during pleasure, and it is a gratuitous assumption to suppose that the Crown, the ministers of the Crown, and the Privy Council, would attempt to poison the source of justice by improperly influencing a judge in the performance of his duties. The reasoning also implies the existence of judges of a most depraved and corrupt nature, for only such would permit themselves to be so influenced. The influence of the Crown, if exercised, would be equally potent, and quite as effective with such men, whether they held their commissions during pleasure, or during good behaviour. The judges represent the person and Majesty of the Queen in the exercise of her highest and most sacred duties. The Queen is the supreme civil magistrate and the representative of justice, and the judges exercise her authority by commission. Looking to their high and dignified position, it is fitting that they should be independent of external influences; but it was suspecting justice in its highest position to place the representative above the power of the Sovereign. I can see no reason for the alteration which was made in the ancient law of England, by the statute to which I have referred; but having been made, I see no reason for altering it. It is remarkable, however, that the sixty-five county court judges do not hold their office by any such secure tenure; for by the 18th section of the 9 & 10 Vict., c. 95, they may be removed by the Lord Chancellor for inability or misbehaviour. If regard be had to the fact that in the House of Commons there are one hundred and fifteen honourable members learned in the law, it will be seen how utterly improbable it is that an address would ever be agreed to for the removal of a judge. The discussion would be endless, and a sufficient difference of opinion would be displayed to secure immunity. The irresponsible nature of a judge's office is therefore manifest.

There is an influence which naturally flows from this state of things which exerts an evil effect upon the country. It renders the bar of England less independent; for the prospect of promotion must be looked for through the portals of the House of Commons; for the political party who may have the ascendancy in that body have the bestowal of vacant judgships. Members of the bar, therefore, naturally aspire to the honour of becoming legislators, and attach themselves to one or other of such political parties; and in proportion as they become humble followers of any party, they cease to be independent gentlemen. One evil consequence of this system is, that a thick-and-thin political partisan, however unqualified by private character and legal attainments, yet, if a good debater and a useful party man, feels certain of promotion, and that his chances of success are greater than other members of the bar who, however worthy and eminent in their profession, are liable to be passed over. Our observation teaches us that if this be not always the rule, the exceptions are few. I am aware that many well-meaning persons defend such system as essential to the working of our constitution. No minister, say they, can expect support unless he rewards his supporters, and the lawyers are the ready debaters in the House of Commons, and the most useful supporters of a government. I deny that there is any such necessity in a minister as this argument implies; the minister who has to purchase support, by the very act betrays the honour of his country, and proves that his position is spurious. That the support of the members of the bar is courted, is manifest from the course of modern legislation, and its practical tendency to favour such body as a class. Attorneys who formerly held the office of judge in the courts for recovery of small debts, and who also held the office of under-sheriffs, and as such executed writs of inquiry, and writs of trial, are now put aside as judges for the exclusive service of members of the bar. The judges of the superior courts are entrusted with the appointment of taxing masters, and were doubtless appointed to perform such duty of selection from their position and learning, in the belief that they were the most competent to select the best qualified persons. In the discharge of this *great public trust* they do not consider it improper or derogatory to their position to treat such appointments as private patronage, and to nominate barristers to such offices without regard to their want of special training for the office, a proceeding which is about as rational as the appointment of a physician would be as house surgeon in a public hospital. The solicitor to the Treasury, and the solicitors to the public departments, are mostly selected from barristers. And as they are not qualified to act as attorneys in courts of justice, the country has to pay for agents for transacting the legal business of the State, in addition to the official's salary. An undue stimulus is thus given to follow the profession of a barrister, and this circumstance will in some measure account for the fact that of late years, while the number of attorneys has remained stationary, the number of barristers has more than doubled. It is not under such circumstances surprising, that many enter the profession who are disappointed in their expectations; and if we consider the great public benefit of having a body of highly educated and honourable men as advocates, the evils of stimulating increased numbers, whereby half are disappointed, will be readily appreciated. It is a fortunate circumstance for the country that most of our great lawyers are too much occupied in their profession to become the daily supporters of a political party.

A slight change in the mode of selecting the judges would, without interfering with an independent support to a Ministry, always secure the best men for the office of judge. With a really good man (a sound lawyer, a man of patience, of learning, of good temper, and of an equitable and liberal judgment) the miscarriage of justice would be almost impossible; and it would matter very little whether he held his office during pleasure, or during good behaviour. The present system of appointment, and the constitutional position of the judges, is, to say the least of it, calculated to create carelessness in the discharge of their duties, and a disregard of consequences; and this may possibly be one cause of the miscarriages of justice, of which clients so frequently complain. Another marked cause is the apparent want of time in some of the judges to hear the matters before them. In order to get through the list of causes, we not unfrequently see that the facts are sometimes guessed at; and a decision is given before the real circumstances of the case are ascertained. Nine times out of ten the decisions may be right, but the exception is the evil. With a little more patience, and a little more time, there would be no exception to complain of. I do not think it is the duty of judges to compete with each other in the dispatch of business. Diligence, patience, urbanity, and a conscientious discharge of their duty, is all that can reasonably be expected of them; and if the exigencies of the

suitors create more business than a judge can physically get through, it is the duty of the State to provide assistance, and not for the judge to become hasty in the discharge of his duties.

Mr. Joseph Brown, with great ability, has exposed defects in our common law system of trial by jury, which renders it unnecessary for me to do more than refer to imperfections in this portion of our judicial system. There is no more potent agent in warping the judgment of mankind than prejudice. Juries are frequently under such influence, and, unconscious of its existence, they frequently allow it to sway their opinions, and give decisions which more unbiassed men would avoid. The alteration made by the Common Law Proceedure Act in the formation of special juries, is, in my opinion, calculated to increase this evil. Under the old system, a man suspected of a "bias" was put aside by one of the attornies, and the gross list of 48 jurors was made up of sound men. The present system excludes the judgment of professional men in the selection of special jurors, and procures only a better class of common jurymen, at a greater expense. I think that men of the greatest intelligence should be summoned on juries, and that they should form part of the court, and feel that their position is one of honour, and the judge should be jointly responsible with them for the verdict. In courts of equity the judge decides, and no prudent thinking person will in such courts ever exchange the judgment of an intelligent judge for that which, under existing procedure, may be the judgment of a prejudiced jury.

From this brief sketch of our judicial system it will be seen that there are many combining causes which contribute to make up the great uncertainty in the administration of justice, so dreaded by clients. To remove these evils, I think that the appointment of a minister of justice is a necessity. There is no really responsible head of the law. The Lord Chancellor in the House of Lords, and the Attorney-General in the House of Commons, overburdened as they are with onerous duties, are poor and most inefficient substitutes for a high public officer who should be specially charged with the supervision of law and justice.

But very recently the Attorney-General, Sir Richard Bethell, declared in the House of Commons that the compensation of £20,000 a-year, proposed to be given by the Bankruptcy Bill, introduced into Parliament during the last session, was the penalty the country would pay for past illjudged alterations in the law. I believe that this sum represents a very small proportion of the actual cost of misguided legal legislation. Some idea of the mischief arising from being misled by eager law reformers, may be obtained from the recent statistical returns of Mr. Redgrave, who, in a manner not to be mistaken, has confirmed the learned Attorney-General's statement as to the penalties paid by the nation for rash changes, termed "reforms." In truth such measures have been more injurious to the profession than to the public, for the latter have only suffered from the increased uncertainty of justice, consequent upon frequent changes, while professional men have lost their living. If we compare the return of the number of writs issued in the superior courts in the year 1859, with that of the previous year 1858, there appears to be a falling off sixteen and a half per cent. in the suits commenced. If there existed returns of the number of writs issued before the passing of the County Courts' Act, the full extent of the evil of modern changes to professional men could be made apparent. Mr. Redgrave's returns show that the total number of writs of summons issued in 1859, was only 86,277, being an average of 8 writs to one-half of the existing practising attorneys, and 9 writs to the other or more fortunate half, the profit on which would about pay the amount of their certificate duty. Of such number of suits commenced, the great mass were settled or arranged in the first stage of proceedings, only 2,029 being carried on and entered for trial, and of this latter number only 965 were actually tried, or about 2 per cent. of the number of actions commenced. This shows as a result that there are 5 attorneys to every cause set down for hearing, and 11 attorneys to every cause actually tried, or that on an average once in five years, every attorney has the good fortune to have a cause set down to be tried, and once in eleven years every attorney has a cause tried.

The total amount recovered in the actions tried was £153,265. The salaries of the 15 judges and Crown officer charged upon the Consolidated Fund is £85,602, which gives an average cost of £89 15*s.* 4*d.* for every cause tried, exclusive of fees levied by officers of the Court, and carried to the fee fund account. If the expense of the Court be contrasted with the amount recovered, it gives as a result 11*s.* 2*d.* in the pound as the cost, or 55 and one-sixth per cent (exclusive of fees).

Before the passing of the County Court Act, the practice in the common law courts was the chief means of support to professional men. We have seen, and still see around us, great firms broken up, and professional men of long standing, after a life time of industry fall to decay. Mr. Redgrave's returns show the cause of this change so far as relates to the courts of common law.

The existing county court system is the offspring of the reform mania, and some instructive facts are to be gathered from the statistical returns respecting them to which I have referred.

The patronage created and placed at the disposal of the State by this measure was the most considerable which has arisen from modern reforms. The cost of these courts for the year 1859 appears, from the financial accounts and civil service estimates, to be as follows:—

	£.
65 Judges' salaries, charged on the Consolidated Fund	76,800
Treasurers	18,050
Travelling expenses of judges	15,000
Travelling expenses of treasurers and their clerks	5,000
Allowance for clerks	4,100
Compensation annuities	4,000
Advance from civil contingencies	25,000
Court houses, stationery, &c.	85,000
	£232,950
Salaries of registrars and bailiffs in part paid out of fees of court	288,392
Making a total of	£521,342

The tax paid by the country appears to be upwards of a quarter of a million sterling, and rather less than a quarter of a million is levied upon the suitors in the shape of fees.

Mr. Redgrave's return at page 132 gives the total number of plaints entered as 714,562, of which number 41,646 appear to be cases which, before the County Court Act passed, would have been sued for in the superior courts. The total amount received through the instrumentality of these courts was £851,732, and the fees levied upon the suitors £215,623. These results show that the total cost of the county court system is 12*s.* 3½*d.* in the pound on the amounts recovered, or 60¼ per cent., of which sum the suitors contribute in the shape of fees 5*s.* in the pound, or 25 per cent. It appears also that there were 27,284 warrants of commitment issued, and 9,003 debtors imprisoned. If the cost to the different counties of such prisoners be taken into account and added to the gross costs of the county court system, I am persuaded that the sum total would considerably exceed the amount of judgments recovered. It would, therefore, be a wise economy and a saving to the country for the state to pay all small debts less discount for collection now levied by county court agents, and to abolish the courts.

The great cost to the country of county courts is but the smallest evil arising from this favourite production of reform. In principle the system aims at collecting the mercantile debts of the country by means of officials who have been created to take the place of attorneys. The public suffer from being debarred from the services of educated professional men, there being no option left to them but either to employ an agent and pay his commission, or to take upon themselves the loss of time and trouble consequent upon county court proceedings. Formerly attorneys were resorted to by the public to transact their business and get in their debts, and upon a letter written by the attorney, or upon issuing and service of process, they obtained payment, two per cent. only of the cases, as appears by Mr. Redgrave's tables, requiring to be tried by a jury. The client was saved time, trouble, and expense by such system, while county courts entail all three upon the suitor. There are also heavy costs beyond the county court allowance, which deter persons from resorting to them, and they prefer losing their debts, and marking them as bad in their ledgers, rather than resort to the county court. The superior courts are practically closed for the recovery of small debts, and the services of attorneys are in substance denied by special enactment.

The number of agents who have sprung up in connexion with the county courts to replace the attorney, is a natural consequence of legislative attempts to destroy that branch of the profession. The profession of the law is degraded by the practices of unqualified persons, and the public mind is imbued with distrust. One instance which came under my observation, was that of a person who acted as a county court agent, and represented himself to be a brother of Sir John Romilly, the Master

of the Rolls; with such high pretensions, it is not surprising that he found persons ready to engage his services. In the case to which I refer, he had the impudence to make out a bill of costs, and to sue for the amount, but not being an attorney, he found at length that he could not recover, and that the credulity of his dupes was the only hope of payment.

As the county court system is the most lauded, and the writers for the newspaper press never tire of proclaiming its presumed benefits, so the Court of Chancery being least understood, is the most abused, and the procedure of common law and county courts are proposed to be transferred to such court. Mr. Redgrave's returns enable me to test the propriety of the proposed change.

In spite of the abuse heaped upon the equity courts, if we may judge from the result of their proceedings, they are manifestly in favour with the public. Mr. Redgrave's return shows that the number of suits instituted in 1859 was 2,847. The number of causes set down to be heard 2,226, and the number heard 2,083. The property, the subject of such suits, amounted to millions, of which there was paid into court £8,577,896. The total sum levied for fees was £97,984 4*s.*, being 2½*d.* in the pound, or about £1 per cent. upon the amount recovered. If there be added to the £97,984 4*s.* the equity judges salaries and those of their secretaries amounting to £39,850 it gives as a result 3½*d.* in the pound or £1 5*s.* per cent. to pay all the expenses of the court, including the heavy compensations granted on the abolition of the Six Clerks' Office. The total amount of taxed costs of solicitors, which include the court fees paid, counsel's fees, stationery, &c., was £794,456, being 1*s.* 10*d.* in the pound on the monies paid into court, or about £9 per cent. as the whole cost of litigation.

If we contrast these figures with those shown by the county court system and its cost of £60 and ¼ per cent., or with the common law courts and their cost of £55 and one-sixth per cent. exclusive of court fees and professional charges, the strongest reason is shown for keeping the equity system free from the experimental graft of the common law procedure.

In the Court of Chancery, in addition to 2,083 causes heard, there were 2,558 petitions heard, on which 2,500 orders were made, there were also 1,265 special orders on motions, and 5,679 orders at chambers. The total number of causes, petitions, and special motions on which counsel were heard by the judges, and which were decided by them without the assistance of the chief clerks, was 5,906. Every one of these proceedings probably exceeded in magnitude and interest, any jury cause tried, during the same period, and the result shows that, whereas at common law 15 judges were engaged upon the trial of 965 causes, and 3,842 criminal prosecutions, there were 4 equity judges, exclusive of the Courts of Appeal, to hear and decide upon 5,906 causes and special matters of dispute. Assuming that the time of the common law judges is fully occupied with the trial of causes and criminal cases according to the common law practice, the same system introduced into chancery would require *eighteen judges* as necessary to do the work of the Court instead of four, the present number. In this computation I have treated every criminal prosecution at the assizes as a trial, but we well know that in fact many of such cases must have been disposed of by grand juries, and others by pleas of guilty. I have not found any return of the actual number of criminal trials at the assizes as distinguished from prosecutions. The cost of prosecutions at the assizes was £49,450 7*s.* 10*d.*

This cursory view of our tribunals I think warrants my assertion that a minister of justice is necessary to be responsible to the country for all measures affecting the administration of justice introduced into Parliament. But in addition to the many facts to which I have adverted there appears to have been 124,861 persons committed to prison during the same period, of which number 15,120 were county court and superior court commitments for debt, leaving 111,741 persons committed for criminal offences. Here there is surely more than enough to call for a responsible head. Besides the enormous outlay entailed by so much crime, there have been numerous commissions issued by the Crown, which have entailed large outlay and which would have been saved had there been a permanent responsible minister of justice charged with the duty of investigating all proposed defects in law or justice.

If these reasons are not sufficient, let us look around upon our vast colonial empire, whose claims to be considered in the administration of justice cannot be overlooked. An appeal to the Queen in council, with its attendant expence is the only means of redress for the miscarriage of justice in British colonies, and the existence of a minister of justice would render colonial courts more careful in the discharge of their duties, and the necessity for appeals would be less frequent.

It may be that the novelty of my proposal may savour so much of innovation that it may be deemed unadvisable that it should be adopted. I abstain from discussing the details of such an office if it were created, or I might show that beyond creating responsibility in the place of irresponsibility, control and order, where there is now disorder, the change is not formidable. Whether I am correct in my opinion or not, I am well satisfied that something ought to be done to get rid of the distrust which modern legislation has created. When men of fortune, of education and considerable influence, speak ill of justice, as I have heard them do, and complain of its uncertainty and evils, it is time to examine the correctness of such complaints. I think that an undue prejudice has been created against a great and noble profession; and with the control of a responsible minister of justice, if he fairly discharged his duties, such prejudice would soon die away, and altogether disappear. England is still the foremost country in the world; the first in arts, in sciences, and literature, and her system of laws has been the model of surrounding nations. It will be a reproach to us if we do not always retain this proud position, and if there is room for complaint of our judicial systems, I think I have fairly expressed it, and in advocating the appointment of a minister of justice, that I have suggested a suitable remedy.

*** Gentlemen are requested to send to Mr. Turner, 9, Carey-street, Lincoln's-inn, such observations as may occur to them on the suggested proposal for the appointment of a minister of justice—also instances of miscarriages of justice which have occurred in their experience, and whether the same have arisen from judicial mistake, from misapprehension of facts, from the mode of procedure in court, technical rule of practice, or otherwise, and if the case is reported, a reference to the report of the case.

Mr. F. N. Devey also contributed a paper on Decisions of the House of Lords, as follows:—

The question seems to be whether "the decisions of the House of Lords are binding upon itself"—"and can only be altered by Act of Parliament," as held by the Lord Chancellor Campbell, *A. G.* v. *Dean and Canons of Windsor*, 8 W. R., 477, or "are binding"—"upon all Courts *except itself*," as held by Sir John Romilly, M. R., see p. 478. It is worthy of notice that Lord Kingsdown, p. 485, desired to reserve his opinion as to the observations of the Lord Chancellor with respect to the extent to which the judicial decisions of the House of Lords are binding in subsequent cases. Mr. Jarman (6 Jarm. Conv. 294, ed. 1829), in reference to the case of *Humble* v. *Bill*, 2 Vern. 444. makes this remark, "This decree was afterwards reversed, upon an appeal to the House of Lords; but the reversal has always been considered to be unsatisfactory; and the principle upon which the original decree was made is completely established by subsequent decisions." The case of *Solarte* v. *Palmer*, 1 Bing. N. C. 194, was considered by Lord Brougham, in concurrence with the unanimous opinion of the judges present, "too clear for an appeal." p. 196. But, in *Robson* v. *Curlewis*, 3 G. and D. 70, Lord Denman, C. J., says of *Solarte* v. *Palmer*, that it "can hardly be now deemed a satisfactory authority." And in *Caunt* v. *Thompson*, 7 C. B. 410, referring to *Solarte* v. *Palmer*, it is said, "a very strict rule was adopted; but that has not been adhered to." Pollock, C. B., in *Paul* v. *Joel*, 6 W. R. 683, speaks of the supposed rule in *Solarte* v. *Palmer*, as being regarded by a number of the profession with regret. And Mr. Baron Bramwell, in reference to some well known case decided by the House of Lords, (it is thought to be this case), says: "No Court, of course, could overrule it; but it has given rise to as much litigation as could possibly take place, and the result is that that case has not been overruled, but distinguished from to such an extent, that if any party now cited it he would be laughed at." See 1 Sol. Jour. 775. And Lord Campbell, C. J., in *Everard* v. *Watson*, 1 Com. L. R. 425, speaks of the decision in *Solarte* v. *Palmer* as "one which has caused much mischief and confusion," and wishes its authority "was got rid of by legislative enactment." In *A. G.* v. *Corporation of London*, 2 McN. & G. 269—272, Lord Cottenham states that the House acted on his advice, and there was an error in it. Now, it seems to me that, should the House of Lords in any decision take that celebrated "one step" from the regions of sublimity to those of risibility, their Lordships would better preserve their dignity, and the beneficial operation of the laws, by embracing (as any other Court would) the first opportunity to retrace that step, than by adhering to what Lord

Eldon called consistency in error, and leaving the unfortunate decision to be laughed at and virtually overruled. But, contrary to my first intention, I am entering into argument, and must stop. I feel contented if by this Paper, I should acquire the title of a useful drudge: one who has furnished to abler heads some materials for discussion and for arriving at, perhaps, a satisfactory conclusion.

Admission of Attorneys.

NOTICES OF ADMISSION.

HILARY TERM, 1861.

[Candidates' names appear in Small Capitals, and Solicitors' to whom articled or assigned in Roman type.]

QUEEN'S BENCH.

ALDERSON, EDWARD SAMUEL.—T. H. Scarborough, Bloomsbury-square.
ALLCARD, WILLIAM HENRY.—G. F. Smith, Golden-square.
ALISON, MATTHEW.—J. J. Wright, Sunderland; H. B. Wright, Sunderland.
BAKER, THOMAS MATHIAS.—J. Baker, Great Yarmouth; C. F. Fisher, Ventnor.
BARNES, ALBERT.—J. W. Mecey, Thatcham, Berks.
BARTLETT, THOMAS HENRY.—J. Matthews, 2, Arthur-street West.
BATLEY, THOMAS MORRIS.—T. S. James, Birmingham.
BEDFORD, CHARLES.—H. Bedford, 4, Gray's-inn-square; E. Ball, Pershore.
BENSON, WILLIAM.—H. A. Gregg, Kirkby Lonsdale.
BENTLEY, FRANCIS.—G. W. Bentley, Worcester.
BEST, WILLIAM.—J. Rolfe, Winchester.
BEWLEY, EDWARD WHITE.—J. H. Thurasfield, Wednesbury.
BISHOP, W. T. BONNELL.—T. Bishop, Wheat Street, Brecon.
BLYTH, ROBERT.—A. Meggy, Chelmsford.
BRADFORD, JOB.—R. Gardner, Leamington, Warwick; R. S. Gregson, 8, Angel Court, Throgmorton Street; J. B. Allen, 20, Bedford Row.
BROS, THOMAS KEMMIS.—Messrs. Domville, Lawrence, & Graham, 6, New Square, Lincoln's Inn.
BROWN, JOHN THOMAS.—E. Percy, Nottingham.
BUBB, WILLIAM HENRY.—J. Bubb, Cheltenham.
CALLAWAY, WILLIAM PARKER.—J. Callaway, Canterbury; R. Furley, Ashford.
COLE, JAMES SAMUEL.—H. Webb, Argyll Street, Regent Street.
CONQUEST, JOHN CARRINGTON.—P. R. Falkner, Newark-upon-Trent.
COULSON, JOHN.—C. C. Foottit, Newark-upon-Trent.
CRICHTON, ALEXANDER CLIFFORD.—R. R. Dees, Newcastle.
CROOK, GEORGE WILLIAM, articled by the name of George Crook.—W. Gibson, 64, Lincoln's-inn-fields.
DAVIES, SAMUEL RICHARD.—J. Cook, Chase Ross.
DAY, FREDERICK WILLIAM.—G. G. Day, St. Ives; J. Broughton, Peterborough.
DENNIS, GEORGE WM., M.A.—D. King, Cambridge; W. B. Young, Hastings.
DIBB, CHRISTOPHER JENKINS.—W. Stewart, Wakefield.
EDDISON, FREDERICK.—E. Eddison, Leeds.
EDENSOR, JOHN EDMONDS.—G. Edmonds, 15, Whittall-street, Birmingham.
FEARNLEY, CHARLES ABRAHAM.—R. Glynes, Crescent, America-square.
FEARENSIDE, JOHN, THE YOUNGER.—J. Fearenside, Burton-in-Kendal, Westmoreland.
FISHER, FREDERICK.—J. Smith, Birmingham.
FOSTER, JAMES.—H. Hudson, Bradford.
FOSTER, JOHN.—J. Foster, Pontefract, York.
FRANKLIN, JOHN VEASEY.—J. E. Wilson, Cranbrook.
FRASER, DOUGLAS ST. CLARE.—C. St. Clare Bedford, Westminster; R. G. Raper, Chichester.
GADSDEN, GEORGE ALFRED.—R. Gadsden, Bedford-row
GAMLEN, ROBERT HEALE.—R. Gamlen, Gray's-inn-square.
GARDNER, JAMES.—R. Swan, Lancaster.
GARVEY, RICHARD EDWARD.—J. T. Tweed, Lincoln; E. Jones, 4, Millman-place, Bedford-row.
GEDGE, PETER.—J. Sparke, Bury St. Edmunds.
GIBSON, PHILIP ROBERT.—Henry Gibson, Ongar.
GIBSON, THOMAS.—R. Bartlett, Chelmsford.
GOLDRICK, JAMES.—J. Rowe, Liverpool.
HADDOCK, CHARLES MILNER.—T. Parker, 18, St. Paul's Churchyard,
HADFIELD, JOHN.—Antony Berwick Were, Wigton.
HARRISON, ALEXANDER, Jun.—H. Hawkes, Birmingham.
HAWKINS, FREDERICK JAMES.—H. Forshaw, 12, Sweeting-street, Liverpool.
HILL, RICHARD CANNING.—C. Pidcock, Worcester.
HILL, WALTER GUY.—J. R. N. Norton, Monmouth.
HILLIARD, JAMES ARTHUR.—W. E. Hilliard, 3, Gray's-inn-square.
HOLT, CHARLES AUGUSTUS.—C. Holt, 93, Guildford-street, Russell-square.
HORTON, SAMUEL STONE.—J. Rawlins, Birmingham.
HUGHES, JOHN.—L. Peel, Liverpool.
JACKSON, HUGH FREDERICK.—J. Jackson, 12, Essex-street, Strand.
JAMES, EVAN.—W. Williams, Bala, Merioneth; J. Morris, Bala and Dolgelly.
JOBSON, THOMAS.—Messrs. Minshall and Sanders, Bromsgrove, Worcester.
KENT, ARTHUR.—W. Boycott, Kidderminster.
KRUGER, HENRY JAMES.—C. Fiddey, Inner Temple; C. Bevan, 3, Small-street, Bristol.
LEADBITTER, THOMAS FRANCIS.—N. Hollingsworth, Gresham-street.
LEE, FREDERICK COOPE.—T. French, Eye, Suffolk.
MATHEWS, JAMES LLEWELLYN.—W. Walton, 30, Bucklersbury.
MILLS, ALFRED THORNCROFT.—W. W. King, Brighton; and College-hill, City.
NEVATT, FRANCIS.—C. Dixon Craig, Shrewsbury.
NEWINGTON, GEORGE.—Messrs. Sankey and Son, Canterbury.
NICHOLLS, SAMUEL THOMAS.—W. Parson Gordon, Bridgnorth.
OLIVER, EDMUND WARD.—T. Oliver, 11, Old Jewry-chambers.
OXLEY, FREDERICK.—A. Kaye, 12, Castle-street, Liverpool; E. S. Mounsey, Staple-inn.
PEACOCK, THOMAS FRANCIS.—J. Cutts, Chesterfield; and South-square, Gray's-inn.
PEARSE, JAMES.—T. W. Pearse, Bedford.
PHILLIPS, ARTHUR BENTLEY.—C. H. Phillips, Kingston-upon-Hull; J. Shepherd, 15, Golden-square.
PIDCOCK, CHARLES FOLEY.—C. Pidcock, Worcester; A. Mason, 15, Furnival's-inn.
PITMAN, FREDERICK.—W. Pitman, 9, Great James-street, Bedford-row.
POTTS, EDWARD BAGNALL.—G. Potts, Broseley.
PRICE, WILLIAM SCARLETT.—J. S. Price, Burford, Oxford; W. H. Trinder, Bedford-row; R. H. Peacock, South-square, Gray's-inn.
PULBROOK, ANTHONY, jun.—C. Robson, 13, Clifford's-inn.
PULLAN, BENJAMIN COLLETT.—J. Shackleton, Leeds.
RABY, W. PARKER POOLE.—J. Russell, York; C. Lever, Old Jewry.
RANDALL, JOHN WILLIAMS.—E. W. Faithfull, Winchester; G. Nelson, Buckingham; J. Randall, Temple.
RASTRICK, GEORGE.—C, E. Jemmett, Kingston; H. P. Sharp, Piccadilly.
ROGERS, WILLIAM.—J. Johnston, 57, Chancery-lane.
ROWLANDS, RICHARD.—J. D. Pugh, Denbigh; R. B. Griffith Bangor, Carnarvon.
SCALE, MARTIN.—W. John, Haverfordwest.
SCOTT, EDWARD.—E. Scott, Wigan.
SHAROOD, CHARLES JAMES.—C. Sharood, Brighton.
SHEFFIELD, THOMAS NEEDHAM.—J. Sheffield, 68, Old Broad-street; Mare-street, Hackney.
SHEPHERD, JAMES PARKINSON.—F. Weyness, Appleby.
SMITH, HENRY, jun.—H. T. Smith, Devonport; F. Baker, jun., Dowgate Hill-chambers.
SMITH, WILLIAM BINNS.—R. Smith, Holborn; G. R. Smith, Holborn.
SOUTHEE, HORACE ROBERT.—R. Southee, 16, Ely-place, Holborn.
SPARKES, WESTON JOSEPH.—W. C. Cleave, Crediton.
SPENCER, THOMAS WILSON.—G. Spencer, Keighley; T. Z. Goldring, Lincoln's-inn-fields.
STANLEY, FREDERICK.—S. Abrahams, 4, Lincoln's-inn-fields.
TATE, THOMAS.—F. Pearson, Kirkby Lonsdale; F. F. Pearson, Kirkby Lonsdale.
THOMPSON, B. BLAYDES, jun.—H. B. Thompson, sen., Tadcaster.
TRYTHALL, WILLIAM.—H. L. Jones, Bangor.
URRY, THOMAS HAMILTON.—J. G. Etches, Whitchurch.
VENNING, WALTER CHARLES, Junr.—W. C. Venning Senr., 9, Tokenhouse-yard,

Wagstaff, F. W. Bentley.—E. H. Pace, Pershore.
Washington, Joseph Woodis Clulow.—J. Wilson, Congleton; C. Moorhouse, Congleton.
Watson, James.—J. D. Francis, Chesham, Bucks; J. Drummond, Croydon.
Watt, Francis James.—T. Scott, Worcester; W. Gregory, 12, Clement's-inn.
Webster, Thomas.—Meaburn Tatham, 20, Austin Friars; A. T. Upton, Austin Friars.
Whalley, Henry Stanley.—T. E. Swift, 6 St. Alban's, Blackburn; J. Bolton, Beardwood, Blackburn.
White, Thomas Matthew;—T. G. Dale, Lincoln; C. Bean Boston.
Whittington, Thomas.—B. Whittington, Dean-street, Finsbury-square.
Wingate, Bernard.—W. G. Allison, Louth, Lincoln.
Woollacott Thomas Griffiths.—T. E. Parson, Grace-church-street.
Worthington, George William.—R. M. Simpson, Manchester.

NOTICES OF ADMISSION.

Pursuant to Judges' Order.

Hilary Term, 1861.

Allen, William Henry Thomas.—T. Chauntler, Gray's Inn Square; A. Rutter, Symond's Inn.
George, Thomas Joseph.—Stretton and Postans, 12 South square; H. Padmore, 2, Duke-street, Adelphi.
Lane, Edward.—W. C. Rule, 26, Milk-street, Cheapside.
Mancell, Walter.—W. Jones, 9, Laurence Pountney-hill; and Harder's-road, Peckham.
Ambler, William.

NOTICES OF ADMISSION.

Pursuant to 23 & 24 Vic. c. 127.

Hilary Term, 1861.

Cook, Thomas Francis.—E. R. Ingram, Stourport; J. Walcot, Stourport.
Dodd, Thomas.—Already admitted an Attorney of the Common Pleas at Lancaster.
Hincks John Steer, (Judge's Order.)—William Roscoe, King-street, Finsbury, Frederick Schultz, King-street, Finsbury, and Dyer's Buildings, City.
Hoare, Edward.—J. W. Taylor, Great James-street.
Kisch, Simon Abraham.—H. M. Daniel, Lancaster-place.
Knott, James Pullen.—W. Sandys, Gray's-inn.
Lay, James.—James Gibbs Abell, Colchester.
Lowthian, Isaac.—D. M'Alpin, Carlisle.
Marshall, Henry, Junr.
Mellor, Zachariah
Plant, William James
Tucker, John.—W. S. Harle, Newcastle-upon-Tyne.
Turner, John, Junr.—Already admitted an Attorney of the Common Pleas at Lancaster.
Turner, Thomas.—W. H. Gaunt, Leeds.
Walter, Henry.—Already admitted an Attorney of the Common Pleas at Lancaster.

Law Students' Journal.

LAW LECTURES AT THE INCORPORATED LAW SOCIETY.

Mr. Frederick Meadows White, on Common Law and Mercantile Law, Monday, Dec. 10.

Mr. Frederick John Turner, on Conveyancing, Friday, Dec. 14.

Births, Marriage, and Deaths.

BIRTHS.

ENGLEHEART—On Dec. 2, the wife of Gardner D. Engleheart, Esq., Barrister-at-Law, of a son.
MACDERMOT—On Dec. 1, at Clover Hill, Boyle, the wife of John D. MacDermot, Esq., Solicitor, of a daughter.

MARRIAGE.

GARDINER—NADIN—On Nov. 29, Frederick George, son of the late William Gardiner, Esq., to Amelia, youngest daughter of the late Thomas Nadin, Esq., Solicitor, Manchester.

DEATHS.

CHEFFINS—On Dec. 2, Lucinda Harrison, wife of Charles Frederick Cheffins, Esq., of Southampton-buildings, Chancery-lane.
FOSTER—On Nov. 26, aged 86, Matthew Foster, Esq., Solicitor, Newcastle-on-Tyne.
PINNIGER—On Nov. 29, at his chambers, Gray's-inn, John Pinniger, Esq., in the 94th year of his age.
SHRIMPTON—On Nov. 28, at Aldburgh, Louisa Mary, widow of the late Joseph Shrimpton, Esq., formerly of Lincoln's-inn, and daughter of the late Rev. Thomas Powys, rector of Fawley, Bucks.

Unclaimed Stock in the Bank of England.

The Amount of Stock heretofore standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months:—

Broughton, Sir John Delves, Bart., Doddington-park, Cheshire, Rev. Henry Delves Broughton, Broughton-hall, Staffordshire, and James Walthall Hammond, Esq., of Wistaston-hall, Cheshire. £172 13s. 2d. Consols.—Claimed by Henry Cocksey, limited administrator of James Walthall Hammond.
Broughton, John Vickery, Gent., Oxford-street, and William Preston, Gent., New Bond-street, £1,900 Reduced Three per Cents.—Claimed by Eliza Preston, Widow, the sole executrix of William Preston, who was the survivor.
John, Mary St., Spinster, Southampton, £140 Consols.—Claimed by Elizabeth Mears, Widow, sole executrix of the Rev. Henry Mears, who was the surviving executor of Thomas Mears, who was the sole executor of the said Mary St. John.
Littlehales, Rev. Joseph Laurentius, Grendon Underwood, Bucks, Rev. Wadham Piggott, Quinton, Bucks, William Piggott, Jun., Esq., Doddershall-park, Bucks, and George Pocrefoy Jervoise, Esq., Herriard House, Hants. £436 7s. 3d. Consols.—Claimed by Francis Jervoise, Ellis Jervoise, Sarah Ann Elizabeth Fitzgerald, wife of Thomas Fitzgerald, and Peter Huddleston, executors of George Purefoy Jervoise, who was the survivor.
Neale, Thomas Tarver Mulliner, Ipswich, Suffolk, £7,033 8s. Consols.—Claimed by Borlase Hill Adams, and Peter Frederick O'Malley, Executors of William Charles Fonnereau, who was the sole executor of the said Thomas Tarver Mulliner Neale.

English Funds and Railway Stock

(*Last Official Quotation during the week ending Friday evening.*)

	English Funds.			Railways—*Continued.*	
			Shrs.		
	Bank Stock	233	Stock	Ditto A. Stock	104½
	3 per Cent. Red. Ann..	92	Stock	Ditto B. Stock	133
	3 per Cent. Cons. Ann.	93⅜	Stock	Great Western	73
	New 3 per Cent. Ann..	92½	Stock	Lancash. & Yorkshire	119½
	New 2½ per Cent. Ann.	..	Stock	London and Blackwall.	63
	Consols for account ..	94½	Stock	Lon. Brighton & S. Coast	116½
	India Debentures, 1858.	96½	25	Lon. Chatham & Dover	53
	Ditto 1859.	96½	Stock	London and N.-Wstrn..	100⅝
	India Stock	..	Stock	London & S.-Westrn.	90
	India 5 per Cent. 1859..	103½	Stock	Man. Sheff. & Lincoln..	84⅝
	India Bonds (£1000) ..	..	Stock	Midland	103
	Do. (under £1000).....	..	Stock	Ditto Birm. & Derby	102½
	Exch. Bills (£1000)....	5 dis.	Stock	Norfolk.....	53
	Ditto (£500).....	..	Stock	North British	62
	Ditto (Small) ..	..	Stock	North-Eastn. (Brwck.)	105½
			Stock	Ditto Leeds	62
	Railway Stock.		Stock	Ditto York	93
			Stock	North London.....	103
Shrs.			Stock	Oxford, Worcester, & Wolverhampton ..	..
Stock	Birk. Lan. & Ch. June.	83			
Stock	Bristol and Exeter....	99	Stock	Shropshire Union	51
Stock	Cornwall	69	Stock	South Devon	43
Stock	East Anglian	17½	Stock	South-Eastern	84⅞
Stock	Eastern Counties	52½	Stock	South Wales	66
Stock	Eastern Union A. Stock	40	Stock	S. Yorkshire & R. Dun	78½
Stock	Ditto B. Stock	29	25	Stockton & Darlington	42
Stock	Great Northern	110½	Stock	Vale of Neath	70

International Exhibition of 1862.—The preliminaries of this great undertaking are now settled, the trust is accepted, and direct action will be begun immediately. The following important letter, in which Lord Granville, the Marquis of Chandos, and Messrs. T. Baring, C. Wentworth Dilke, and T. Fairbairn, accepted the trust proposed by the Society of Arts, has been received by that society:—"London, Nov. 22. Sir,—We have to acknowledge the receipt of your letter of yesterday, inclosing the copy of a communication from her Majesty's Commissioners for the Exhibition of 1851 to the Council of the Society of Arts, in which the Commissioners express their general approval of the object which the society has in view in organizing the Exhibition of 1862, and their willingness to render such support and assistance to the undertaking as may be consistant with their position as a chartered body, and with the powers conferred upon them by their charter of incorporation. Under these circumstances, we have to request that you will intimate to the Council of the Society of Arts our willingness to accept the trust, which the Council and the guarantors have in so flattering a manner expressed a wish to impose on us, on the understanding that the Council will forthwith take measures for giving legal effect to the guarantee, and for obtaining a charter of incorporation satisfactory to us. We have the honour to be, Sir, your obedient servants, (signed) Granville, Chandos, Thomas Baring, C. Wentworth Dilke, and Thomas Fairbairn."

London Gazettes.

Windings-up of Joint Stock Companies.

TUESDAY, Dec. 4, 1860.

LIMITED IN BANKRUPTCY.

HADFIELDS PATENT CASK AND PACKAGE COMPANY (LIMITED).—Petition to wind up, presented December 3, will be heard before Commissioner Perry, at Liverpool, on December 11, at 12.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, Dec. 4, 1860.

BAITES, EDWARD, Farmer, Pittsford Lodge, Pittsford, Northamptonshire. Hewitt, Solicitor, Northampton. Dec. 31.

GALE, WILLIAM, Agriculturist, Grickstone Farm, Horton, Gloucestershire. Bush & Ray, Solicitors, 9, Bridge-street, Bristol. March 15.

GREEN, ROBERT FLETCHER, Gent., Headingley, Leeds. Preston, Solicitor, Leeds. Feb. 1.

GREENHALGH, RICHARD, Cotton Doubler, Mansfield, Nottinghamshire. Smith, Solicitor, Wheeler-gate, Nottingham. Feb. 28.

HARVEY, HENRY, Esq., formerly of 1, Cambridge-square, Middlesex, and 59, Regency-square, Brighton. Whiting, 11, New-inn, or Finney, 6, Furnival's-inn, Solicitors. Jan. 1.

HILL, EDWARD, Commander of her Majesty's brig Spy, a Lieutenant in her Majesty's navy. Woodrooffe, Solicitor, 1, New-square, Lincoln's-inn, London. March 1.

HILL, JAMES DOVER, Esq., Ovens Gold Field, Australia. Woodrooffe, Solicitor, 1, New-square, Lincoln's-inn, London. Sept. 1.

LACELLES, CHARLES FRANCIS ROWLEY, Esq., 35, Upper Grosvenor-street, Middlesex, a Colonel in her Majesty's army, and formerly a Colonel in the Grenadier Guards. Burley & Carlisle, Solicitors, 8, New-square, Lincoln's-inn, Middlesex. Jan. 8.

LEADELL, THOMAS, Yeoman, late of Pinchbeck, Lincoln, and formerly of Doncaster. Clark, Solicitor, Holbeach. Jan. 31.

SEEATE, ELIZABETH JANE, Widow, 4, Kensington-place, Bath. Stone, Chamberlayne, & King, Solicitors, Bath. Feb. 23.

SLADEN, JOHN BAKER, Esq., Ripple Court, Kent. Sladen, Solicitor, 14, Parliament-street, Westminster, and Sladen, Solicitor, 2, King's-arms-yard, London, Executors. Feb. 1.

FRIDAY, Dec. 7, 1860.

BELLMAN, VINCENT, Scagliolist, and Plaster Manufacturer, 6, Fitzroy street, Fitzroy-square, Middlesex, and 14, Buckingham-street, Fitzroy-square, Middlesex. Taylor & Woodward, Solicitors, 28, Great James-street, Bedford-row, Middlesex. Feb. 1.

BOTTERILL, REBECCA, Widow, Flaxton, Yorkshire. Hesp & Moody, Solicitors, Scarborough. Feb. 7.

BOUGHTON, ANN, Widow, Kingsholm, Gloucestershire. Smith, Solicitor, 10, Berkeley-street, Gloucester. Feb. 1.

DOWNES, WILLIAM, Gent., Villa-road, Handsworth, Staffordshire. Cutler, Solicitor, 16, Moor-street, Birmingham, Jan. 10.

FORSTER, JOHN DODD, Yeoman, Ridge End, Falstone, Northumberland. Kirsopp, Solicitor, Hexham, Northumberland. Feb. 1.

GARRETT, JOHN, Farmer, Leathersby, Sudbury, Derbyshire. Hogg, Solicitor, Market-street, Nottingham. Jan. 15.

GOODSON, Miss HARRIETT, 18, Bedford-place, Clapham, Surrey. Burchell, Hayne, and Hall, Solicitors, 24, Red Lion-square, Holborn. Dec. 15.

HODGKINSON, JOHN, Esq., Brighton, Sussex. Hodgkinson, Solicitor, 17, Little Tower-street, London, E.C. Feb. 1.

HOULDER, WILLIAM, Plumber, Painter, &, Glazier, 3, Church-street, Southwark, Surrey. H. J. Godden, Solicitor, 1, Clement's-lane, London, E.C. June 12, 1861.

JOHNSON, WILLIAM, Cotton Spinner, Wigan, Lancashire. Harrison, Solicitor, one of the executors, Pemberton, Lancashire. Jan. 31.

LOCAS, JAMES, Silver Plater, formerly of Hockley Hill, Birmingham, and late Warstone-road, Birmingham. Marshall, Solicitor, Eldon-chambers, Cherry-street, Birmingham. Dec. 17.

PERRIOR, ANNE ELIZABETH, Widow, 15, Maida-hill West, Middlesex. Gadsden & Flower, Solicitors, 28, Bedford-row, Middlesex. Jan. 10.

VARLEY, HANNAH, Widow, Broadway, Worcestershire. Towle & Eliot, Solicitors, Cheltenham. Dec. 31.

WHIPHAM, FRANCES, Widow, 15, Russell-square, late of Pembridge-crescent, Bayswater, Middlesex. Robinson & Haycock, Solicitors, 32, Charterhouse-square, Middlesex. Dec. 31.

WILKINSON, Mary, Widow, Picton-place, Swansea, Glamorganshire. Voss, Solicitor, Town Hall, Bethnal-green, Middlesex. Feb. 1.

(County Palatine of Lancaster).

FRIDAY, Dec. 7, 1860.

BESWICKE, ROBERT, Innkeeper, Lord-street, Rochdale. Curl *v.* Wolstenholme, Office of Registrar of Manchester District, 4, Norfolk-street, Manchester. Jan. 8.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, Dec. 4, 1860.

DAVIES, JOSEPH, Merchant, Chepstow, Monmouthshire. Baldwin *v.* Read, V. C. Stuart. Jan. 9.

GOSWELL, ROBERT, Butcher, 50, Sloane-street, Chelsea, Middlesex. Fiske *v.* Knight, M.R. Jan. 11.

HARRISON, GEORGE BOLTON, a Paymaster and Purser in Her Majesty's Royal Navy, St. Mark's-road, Island of Jersey. Harrison *v.* Corner, M.R. Jan. 11.

HYDE, MARY, otherwise HIDE, Widow, Stotfold, Bedfordshire. Masters *v.* Hyde, V. C. Stuart. Jan. 10.

PALMER, RICHARD WALKER, Farmer, Enfield Wash, Middlesex. Palmer *v.* Gairdner, M.R. Dec. 22.

PARSALL, WILLIAM HENRY, Esq., Milton-next-Gravesend, Kent. Fletcher *v.* Burt, V. C. Stuart. Jan. 9.

STEPHENSON, FLORENTICE FREDERICK, Esq., formerly of Twickenham, Middlesex, and late of the Union Club, Trafalgar-square, Middlesex, and 78, St. James'-street, Brighton. M.R. Jan. 7.

STEVENSON, GEORGE, Miller, Witcomb Mills, Hillmarton, Wilts. Dixon *v.* Stevenson, M.R. Jan. 11.

WALLER, JOSEPH GABRIEL, Esq., 36, Porchester-square, Middlesex. Waller *v.* Waller, M.R. Jan. 11.

WESTMACOTT, HENRY SEYMOUR, Gent., 1, Gordon square, and 28, John-street, Bedford-row, Middlesex, and of Abeira, Llanfihangel-y-Traethau, Merionethshire. Prosser *v.* Westmacott, V.C. Wood. Dec. 25.

FRIDAY, Dec. 7, 1860.

BEYNON, JENKIN, Esq., Llaethliw, Henfenyw, Cardiganshire. Evans *v.* David, V. C. Stuart. Jan. 12.

CAMPBELL, COLIN, Esq., Cheltenham. Campbell *v.* Eld, V. C. Stuart. Jan. 15.

EELES, JAMES, Draper, Newark-upon-Trent. Eeles *v.* Procter, V. C. Stuart. Jan. 14.

GRUNDY, HENRY WILLIAM, Licensed Victualler, Northfleet, Kent. Smith *v.* Parks, M. R. Jan. 11.

HOLBOROW, GEORGE, Cheesemonger, Clare-street, Clare-market, St. Clement Danes, Middlesex. Webb *v.* Holborow, V. C. Stuart. Jan. 18.

PARKINSON, JOSEPH SAMUEL, Gent., Norwich. Binns *v.* Nichols, V. C. Wood. Jan. 11.

PARKINSON, WILLIAM WIGGETT, Gent., Bracondale-hill, Norwich, Norfolk. Binns *v.* Nichols, V. C. Wood. Jan. 11.

RIGGALL, JOSEPH, Farmer, Leasingham, Lincolnshire. Pheasant *v.* Riggall, V.C. Stuart. Jan. 12.

WETWAN, GEORGE, Solicitor, Bridlington Quay, York. Cartwright *v.* Wetwan, V.C. Stuart. Jan. 9.

Assignments for Benefit of Creditors.

TUESDAY, Dec. 4, 1860.

CRABB, JAMES, Baker and Grocer, Bruton, Somersetshire. Nov. 21. *Sol.* Balch, Bruton.

GRIFFITHS, ROBERT, Linen and Woollen Draper, Cowbridge, Glamorganshire. Nov. 12. *Sols.* Davidson, Bradbury, & Hardwick, Weavers'-hall, 22, Basinghall-street.

MEACOCK, WILLIAM, Confectioner, Liverpool. Nov. 8. *Sol.* Teebay, 10, Sweeting-street, Castle-street, Liverpool.

PARIS, JOHN HATHERALL, & JOSEPH JACKSON, Provision Dealers, Liverpool. Nov. 6. *Sol.* Teebay, 10, Sweeting-street, Castle-street, Liverpool.

RAYNER, WILLIAM REUBEN, Watchmaker & Jeweller, 32, Castle Bailey-street, Swansea, Glamorganshire. Nov. 5. *Sol.* Carpenter, 7, Bank-chambers, Lothbury, London.

ROWELL, WILLIAM, Farmer, Berwick, Isle of Ely. Nov. 17. *Sol.* Serjeant, Ramsey, Hunts.

SCAIFE, JOHN, SAMUEL SYKES, JOSEPH HARGREAVE, THOMAS GROUNDWELL, GEORGE TUNSTALL, JAMES ATKINSON, JAMES RAWLINSON, & GEORGE DIXON, Cloth Finishers, Leeds (Scaife, Sykes, & Co.) Nov. 19. *Sol.* Sykes, 30, Commercial-buildings, Leeds.

TELFORD, WILLIAM, JOSEPH SHARP, & JAMES FARRAR, Iron Merchants, Soho Foundry, Meadow-lane, Leeds. Nov. 8. *Sol.* Granger, Newton-grove, Potter Newton, Leeds.

FRIDAY, Dec. 7, 1860.

ANDREWS, ARTHUR, Currier, Modbury, Devonshire. Nov. 28. *Sol.* Shephard, 9, Size-lane, London.

ANDREWS, JOHN, Surgeon & Apothecary, Salisbury. Nov. 24. *Sols.* Holdings, Townsend, & Lee, Salisbury.

BAKER, SAMUEL ABRAHAM, Draper, Ashbourne, Derbyshire. Nov. 26. *Sol.* Welch, Ashbourne, Derbyshire.

BROWN, SAMUEL NEALE, Grocer, Hertford. Nov. 28th. *Sols.* Robinson, Nicholls, & Leatherdale, 14, Old Jewry Chambers.

DICKSON, JOHN. Draper, Grocer, & Tea Dealer, Holsworthy, Devonshire. Nov. 7. *Sol.* Kingdon, Holsworthy.

FOREMAN, CHARLES, Builder, Redhill, Reigate, Surrey. Nov 22. *Sol.* Morrison, Reigate.

GLOVER, WILLIAM, Publican & Builder, 119, Westfield-street, St. Helen's, Lancaster. *Sol.* Johnson, St. Helen's, Eccleston.

NORTH, THOMAS, Coal Dealer, Aylesbury, Buckingham. Nov. 9. *Sol.* Benson, Aylesbury.

PRITCHARD, ROBERT, Innkeeper, Aberdovey, Merioneth. Nov. 8. *Sol.* Conway, 4, Harrington-street, Castle-street, Liverpool.

SAXBY, WALTER, Upholsterer, Folkestone, Kent. Nov. 30. *Sol.* Minter, Folkestone.

SHAW, ABRAHAM PIERPOINT, Printer, 18, Bolt-court, Fleet-street, London. Nov. 17. *Sol* Nicholson, 48, Lime-street, London.

STANNARD, JAMES. Painter & Plumber, Newport, Isle of Wight. Nov. 20. *Sol.* Woodrooffe, Lincoln's-inn, Middlesex.

TAYLOR, FREDERICK WILLIAM, Coal Merchant, Nottingham. Dec. 3. *Sol.* Morley, Nottingham.

WOODWARD, WALTER CHARLES, Jeweller, Liverpool. Nov. 19. *Sol.* Conway, Liverpool.

Bankrupts.

TUESDAY, Dec. 4, 1860.

BAKER, RICHARD, General Smith, 103, High-street, Barnstaple. *Com.* Andrews: Dec. 19, & Jan. 23, at 12; Exeter. *Off. Ass.* Hirtzel. *Sol.* Fryer, St. Thomas, Exeter. *Pet.* Dec. 1.

BROOK, JOHN, Electro Plater, Birmingham. *Com.* Sanders: Dec. 17, & Jan. 21, at 11: Birmingham. *Off. Ass.* Whitmore. *Sol.* Smith, Birmingham. *Pet.* Nov. 30.

COLE, WILLIAM, jun., Iron & Steel Merchant & Shipping Agent, 10, Mark-lane, London. Dec. 18, at 12; and Jan. 17, at 2: Basinghall-street. *Off. Ass.* Bell. *Sol.* Brewer, 3, Philpot-lane. *Pet.* Dec. 4.

EATON, CHARLES, jun., Leather Factor, South King-street, Manchester. *Com.* Jemmett: Dec. 19, & Jan. 18, at 12; Manchester. *Off. Ass.* Pott. *Sol.* Taylor, 32, Cooper-street, Manchester. *Pet.* Oct. 19.

FREESTONE, EDWARD WASON, Milliner and Straw Hat Manufacturer, 11, Clarke's-place, High-street, Islington, Middlesex. *Com.* Evans: Dec. 18, at 11; & Jan. 17, at 12; Basinghall-street. *Off. Ass.* Johnson. *Sol.* Mardon, 99, Newgate-street. *Pet.* Dec. 3.

HARRIS, WILLIAM, jun, Miller, Ilford, Essex. *Com.* Fonblanque: Dec. 14, at 1: & Jan. 9, at 12.30: Basinghall-street. *Off. Ass.* Stansfeld. *Sol.* Treherne, 17, Gresham-street, London. *Pet.* Nov. 23.

HINCHLIFFE, BENJAMIN, Cloth Manufacturer, Littlemoor, Pudsey, Calverly, Yorkshire. *Com.* West: Dec. 20, & Jan. 18, at 11; Leeds. *Off. Ass.* Young. *Sols.* Dunning & Kay, Bond-street, Leeds. *Pet.* Nov. 27.

HOPKINS, SAMUEL, Horn Worker, Bewdley, Worcester. *Com.* Sanders: Dec. 14, & Jan. 18, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* James & Knight, or Warmington & Stokes, Dudley. *Pet.* Nov. 30.

KIPPAX, JOHN, Watch Maker and Silversmith, East Retford, Nottingham. *Com.* West: Dec. 15, & Jan. 19, at 10; Sheffield. *Off. Ass.* Bowin. *Sols.* Mee, Burnaby, & Denman, East Retford; or, Bond & Barwick, Leeds. *Pet.* Nov. 19.

M'LENNAN, GEORGE JAMES, & JOHN WILLIAM BIRD, Builders and Contractors, 12, Osnaburgh-street, Regent's-park, Middlesex. *Com.* Fonblanque: Dec. 14, & Jan. 18, at 11.30; Basinghall-street. *Off. Ass.* Stansfeld. *Sols.* Linklaters & Hackwood, 7, Walbrook, London. *Pet.* Dec. 4.

MURDOCH, DAVID, Grocer and Provision Dealer, Liverpool. *Com.* Perry: Dec. 17, & Jan. 10, at 11; Liverpool. *Off. Ass.* Bird. *Sol.* Yates, jun., Fenwick-street, Liverpool. *Pet.* Nov. 30.

PARRIS, HENRY, Machine Maker, Bridport, Dorset. *Com.* Andrews: Dec. 19, & Jan 23, at 12; Exeter. *Off. Ass.* Hirtzel. *Sols.* Flight & Loggin, Bridport; or, Turner & Hirtzel, Exeter. *Pet.* Nov. 23.

FRIDAY, Dec. 7, 1860.

AMBLER, JOSEPH, Worsted Manufacturer, Bradford, Yorkshire. *Com.* West: Dec. 20, and Jan. 18, at 11; Leeds. *Off. Ass.* Young. *Sols.* Ingram & Baines, Halifax, or Bond & Barwick, Leeds. *Pet.* Nov. 27.

BEECH, THOMAS, Joiner & Builder, 4, Severs-street, Everton Liverpool. *Com.* Perry: Dec. 17, and Jan. 10, at 11. *Off. Ass.* Morgan. *Sol.* Toulmin, 57, Roscoe-street, Liverpool. *Pet.* Dec. 4.

BROADBRIDGE, JAMES, Grocer & Chinaman, Arundel, Sussex. *Com.* Fonblanque: Dec. 19, at 1.30; and Jan. 17, at 11.30; Basinghall-street. *Off. Ass.* Graham. *Sols.* Lawrence, Plews, & Boyer, 14, Old Jewry-chambers, London, and R. & G. Holmes, Arundel. *Pet.* Dec. 5.

CLAPPISON, JOHN WARD, Jeweller & Watch Maker, Kingston-upon-Hull, Yorkshire. *Com.* Ayrton: Dec. 19, and Jan. 16, at 12; Kingston-upon-Hull. *Off. Ass.* Carrick. *Sols.* Bartleet & Son, Birmingham; Preston, Hull; or Bond & Barwick, Leeds. *Pet.* Nov. 28.

FROSTICK, WILLIAM, jun., Glengall-road, Cubitt's Town, Poplar, Middlesex, and ABRAHAM BOYS, William-street East, Poplar, Builders, (Frostick & Boys). *Com.* Evans: Dec. 18, at 1.30; and Jan. 17, at 11; Basinghall-street. *Off. Ass.* Johnson. *Sol.* Turner, 8, Mount-street, Whitechapel. *Pet.* Dec. 6.

M'LEOD, WILLIAM, Builder, Undertaker, & Ironmonger, Kingston-upon-Hull. *Com.* Ayrton: Dec. 19, & Jan. 16, at 12; Kingston-upon-Hull. *Off. Ass.* Carrick. *Sols.* Wilson, or Chester, Hull. *Pet.* Dec. 3.

MURRELL, GIBBS HOWES, Brick & Tile Maker & Farmer, Surlingham, Norfolk. *Com.* Holroyd: Dec. 17, at 1; and Jan. 29, at 12; Basinghall-street. *Off. Ass* Edwards. *Sols.* Blake, 4, Serjeant's-inn, Temple; or Taylor & Son, Norwich. *Pet.* Nov. 30.

POUTEAU, JOHN ALEXANDER, Printer & Advertising Agent, Pond-street, Hampstead, and late of Southampton-street, Strand, Middlesex. *Com.* Fonblanque: Dec. 18, at 11.30; and Jan. 17, at 12; Basinghall-street. *Off. Ass.* Stansfeld. *Sols.* Lawrance, Plews, & Boyer, 14, Old Jewry-chambers, London. *Pet.* Dec. 5.

PARRY, GUSTAVE JOHN, Merchant, 3, Brabant-court, Philpot-lane, London. *Com* Goulburn: Dec. 17, and Jan. 18, at 11; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Fraser & May, 78, Dean-street, Soho, London. *Pet.* Nov. 29.

PATTISON, THOMAS SEPTIMUS, & FREDERICK MILES, Wholesale Stationer. 9, Lawrence Pountney-hill, London (Pattison & Miles). *Com.* Holroyd: Dec. 17, at 1, and Jan. 22, at 12; Basinghall-street. *Off. Ass.* Edwards. *Sols.* Lawrence, Smith, & Fawdon, 12, Bread-street, Cheapside, London. *Pet.* Dec. 7.

SHIPLEY, EDWARD, jun., Brickmaker, Giltbrook, Notts., & FRANCIS EDWARD SHIPLEY, Tanner, Currier, & Leatherseller, Nottingham. *Com.* Sanders: Dec. 20 & Jan. 2, at 11; Nottingham. *Off. Ass.* Harris. *Sols.* Coope, Nottingham, and Freeth, Rawson, & Browne, Nottingham. *Pet.* Sept. 27 & Dec. 3.

STRELITZ, MOSES DAVID, Merchant, 73, Newgate-street, London. *Com.* Fonblanque: Dec. 19, at 2, & Jan. 17, at 12.30; Basinghall-street. *Off. Ass.* Stansfeld. *Sols.* George & Downing, 5, Sise-lane, London. *Pet.* Dec. 5.

WALKER, HENRY, Hatter, Leicester (Henry Walker & Co.) *Com.* Sanders: Dec. 20 & Jan. 8, at 11. *Off. Ass.* Harris. *Sols.* James & Knight, Birmingham. *Pet.* Nov. 22.

WATKINS, DAVID, Cattle Dealer, Backway Farm, Shebbear, Devon. *Com.* Andrews: Dec. 23, & Jan. 23, at 12: Exeter. *Off. Ass.* Hirtzel. *Sol.* Fulford, North Tawton, Devon. *Pet.* Nov. 1.

WILLIAMS, GEORGE LONDBRIDGE, Builder, 33, Florence-street, Islington-Middlesex. *Com.* Holroyd: Dec. 18, 2.30; & Jan. 18, at 11; Basing hall-street. *Off. Ass.* Edwards. *Sol.* Chidley, 10, Basing hall-street London. *Pet.* Dec. 4.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, Dec. 4, 1860.

BAXTER, SAMUEL, Ship Smith, Windlass and Capstan Manufacturer, 73, Minories, London, and of Glasshouse-street, Upper East Smithfield, Middlesex. Dec. 27, at 11; Basinghall-street.—BUCHANAN, DANIEL, and ROBERT BENN, Merchants, Liverpool. Dec. 28, at 11; Liverpool.—CREDLAND, JAMES, Builder, Hulme, Lancaster. Dec. 27, at 12; Manchester.—DRAY, WILLIAM, Farmer, Agricultural Implement Maker and Seller, Farningham, Kent. and at Adelaide-place, London-bridge, (William Dray & Co.) Dec. 27, at 12; Basinghall-street.—ECCLES, JOSEPH, EDWARD ECCLES, and ALEXANDER ECCLES, Cotton Brokers, Liverpool. Dec. 14, at 11; Liverpool.—FENN, WILLIAM, Underwriter and Insurance Broker, 11, New Broad-street, London, and late of Lloyd's Coffee House, Royal Exchange. Dec. 28, at 11.30; Basinghall-street.—FREEMAN, GEORGE, & HENRY WRIXON, Lead & Glass Merchants, & Pewterers, Blenheim-street, Oxford-street, Middlesex. Dec. 27, at 11.30; Basinghall-street.—HAPGOOD, WILLIAM, Ironmonger, 7, Upper Saint Mary-street, Southampton. Dec. 28, at 11; Basinghall-street.—NICHOLLS, WILLIAM, Manufacturer of Blue, Leicester. Dec. 27, at 11; Nottingham.—PEARCE, JOHN, Woollen Draper, Holborn-hill, Middlesex. Dec. 27, at 12; Basinghall-street.—RUTHERFORD, WILLIAM HAMILTON, Grocer, Nottingham. Dec. 27, at 11; Nottingham.—SCORE, WILLIAM, Soap Manufacturer, Manor-street, Hatcham, Surrey. Dec. 27, at 12; Basinghall-street.—WALKER, JOHN, & WILLIAM WALKER, Joiners, Builders, & Contractors, Birkenhead. Dec. 28, at 11; Liverpool.—WILKINSON, JOHN, Ironmaster, Brymbo, Denbigh. Dec. 28, at 11; Liverpool.

FRIDAY, Dec. 7, 1860.

APPLEYARD, FREDERICK, Tanner & Currier, Bradford. Jan. 15, at 11: Leeds.—BRAME, WILLIAM RAWSON, and JOHN BRAME, jun., Printers, Birmingham. Jan. 7, at 11; Birmingham.—BURN, EDMUND JOHN, jun., Stationer, 40, Ship-street, Brighton, Sussex. Dec. 28, at 12; Basinghall-street.—CHADWICK, JOSEPH, Stone Merchant, Willington Wharf, Augustus-street, Regent's Park, Middlesex. Dec. 28, at one; Basinghall-street.—COX, WILLIAM JOHN, Grocer, 44, Fetter-lane, London. December 28, at eleven; Basinghall street.—DALES, JOHN, Merchant, Gresham-house, Old Broad-street, and Dewsbury, Yorkshire. Dec. 18, at 12; Basinghall-street.—DURRANT, GEORGE, & GEORGE BROCK, Tallow Chandlers and Soap Manufacturers, St. Michael, Cosiany, Norwich. Dec. 28, at 11; Basinghall-street.—EVANS, EDWARD, Draper. Wednesbury, Stafford. Jan. 7, at 11; Birmingham.—GRANGER, JAMES, GEORGE BATTISON HAINES, WILLIAM RICHARD HEATH, & JOHN METCALF, Electro Platers (Heath & Co.), Birmingham, Warwick. January 7, at 11; Birmingham.—GRANGER, JAMES, GEORGE BATTISON HAINES, WILLIAM RICHARD HAINES, & JOHN METCALF, Electro-platers, Birmingham (Heath & Company). Jan. 7, at 11; Birmingham. Same time, separate estate and effects of George Battison Haines.—GWYER, EDMUND, African Merchant & Ship Owner, Bristol (Edmund Gwyer & Son). Jan. 10, at 11; Bristol.—HAYKEN, JOHN, jun., Merchant & Maltster, Padstow, Cornwall. Jan. 2, at 12; Exeter.—HULLAH, JOHN, Bookseller, St. Martin's Hall, Long Acre, and 5, Langham-street, Portland-place, Middlesex. Jan. 3, at 11; Basinghall-street.—LEIBIUS, EMIL HENRY, Merchant, 31, Bush-lane, Cannon-street, London. Jan. 3, at 12; Basinghall-street.—PERRY, FREDERICK CHARLES, Iron Master, Roughwood Colliery & Furnaces, Ryecroft Colliery, Walsall, and of Hallfields Furnace, Bilston, Staffordshire, and of Stockport, Chester. Jan. 7, at 11; Birmingham.—PITCHER, JAMES, Leather Seller, Hampstead-road, Middlesex. Dec. 28, at 11; Basinghall-street.—PRICE, JOHN, Draper, General-shop Keeper, and Manager of a Shop, Abertillery, Aberystruth, Monmouthshire. Jan. 3, at 11; Bristol.—ROBERTS, JOHN, Tailor & Draper, Taunton, Somersetshire. Jan. 2, at 12; Exeter.—ROUTLEDGE, SAMUEL, Dyer, Huddersfield. Jan. 15, at 11; Leeds.—ROYLE, GEORGE, Flint Glass Manufacturer, Sutton, Saint Helen's, Lancashire. Dec. 17, at 12; Liverpool.—SPICER, THOMAS, Oil & Colourman, 2, Little Britain, London. Dec. 29, at 12; Basinghall-street.—STEPHENSON, JAMES, Cabinet Maker & Upholsterer, 36, Crawford-street, Bryanstone-square, Saint Marylebone, Middlesex. Dec. 19, at 1; Basinghall-street.—TEARLE, DAVID, Straw Plait Dealer, Houghton Regis and of Luton, Bedfordshire. Dec. 28, at 1; Basinghall-street.—WALLER, JOHN, Dealer in Oil and Cake Merchant, Hitchin, Hertford. Dec. 31, at 12.30; Basinghall-street.—WATSON, ROBERT, & CHARLES WILLIAM WATSON, Carriers and Boot and Shoe Manufacturers, (C. W. Watson & Co.), Kettering, Northampton. Dec. 28, at 11.30; Basinghall-street.—YAXLEY, JOHN, Farrier and Cab Proprietor, Providence-yard, Vauxhall-bridge-road, Westminster. Jan. 4, at 11; Basinghall-street.

We cannot notice any communication unless accompanied by the name and address of the writer

****Any error or delay occurring in the transmission of this Journal should be immediately communicated to the Publisher*

THE SOLICITORS' JOURNAL.

LONDON, DECEMBER 15, 1860.

CURRENT TOPICS.

In to-day's number we finish the publication of the papers contributed by members of the Metropolitan and Provincial Law Association for their recent meeting at Newcastle. We shall now do no more than remind our readers of some valuable suggestions contained in these essays. The address of Mr. Kennedy, as President, was mainly devoted to a review of recent legislation as it peculiarly affects the administration and practice of the law. It also, however, touches upon some minor but important questions relating to the usage of the profession, as to which the Association, since its former annual meeting, had passed certain resolutions. In our impression of last week we gave another very elaborate paper by Mr. John Turner, the object of which is to show the great importance to the profession, and the country at large of the institution of a department of justice. Mr. Turner has brought together a striking array of facts and figures in support of his argument, which, upon the whole, is more telling than any which has yet been adduced upon the same topic. Many of his statements supported as they are by the authority of Mr. Redgrave's statistics, are truly startling, and must soon attract the attention of the Legislature. He points out with great force the enormous expense to the country of the county court system, its total cost being considerably over half a million a year, of which more than half is paid out of the public revenue, while the total amount recovered through the instrumentality of these courts is in round numbers not much above three quarters of a million; and as an additional expense the country has to support the 9,000 or 10,000 debtors annually imprisoned by county court judges. Is not Mr. Turner, therefore, justified in the remark that it would "be a wise economy, and a saving to the country for the State to pay all small debts less discount for collection now levied by county court agents and to abolish the courts." As to the evils arising from the general employment of the county court and other "agents," we earnestly commend to the attention of our readers the perusal of Mr. Turner's paper, and a letter on the same subject from "a solicitor" which appeared in the *Solicitors' Journal* of last week.

Of a different class from any of the foregoing papers is the learned essay of Professor Johnson, of Birmingham, on the Law of Judgments as affecting Real Property, of which we shall say nothing more than that we have received communications from different quarters, to the effect that it would be highly desirable if papers such as those of Mr. Johnson were more frequently contributed by members of our law societies.

Mr. C. A. Smith's paper on the Abolition of Oaths, which has also appeared in these columns, touches upon a subject of a juristical, or perhaps a moral, rather than a legal character. It is one, however, not without interest to lawyers, and in respect of which the public sentiment is daily becoming more favourable to a change.

Mr. Shaen's observations, on the Etiquette of the Bar, raise between the two branches of the profession some delicate but not unimportant questions, which can never be settled satisfactorily to either except by a courteous consideration on the part of both, and which has not been wanting so far as Mr. Shaen is concerned. In considering the subject of bar etiquette it should always be borne in mind that persons who are not members of the bar have no right to take exception to it except so far as it affects their interests or themselves personally. Mr. Shaen accordingly, bearing this distinction in mind, has confined himself in his paper for the most part to the simple question, whether the rule of the bar requiring the employment of two counsel in certain cases is not oppressive upon clients who require the services of one only; and this certainly is a question which may well be discussed by any member of society. Whether the mode of discussion adopted by Mr. Blundell in his letter to this Journal of last week is the most likely to lead to any useful result is, however, very questionable.

Mr. Devey's memorandum on Decisions of the House of Lords, noting up as it does a number of authorities upon the question whether the ultimate Court of Appeal is bound by its own decision, is a useful contribution upon this moot point.

Mr. Miller's paper, which we publish to-day, contains some useful suggestions for the constitution of country law societies. He agrees with us in recommending not merely preliminary examinations for articled clerks, but also periodic ones. While on this subject, we may allude to the important communication concerning the prospects of legal education in Ireland, which we published last week, as to the institution of both preliminary and final examinations for articled clerks—the former comprising a curriculum of general subjects of education.

We have thought it right to remind our readers of the useful labours of the Metropolitan and Provincial Law Association, and to call attention to the above-mentioned papers, as there is always some danger, on account of the form in which they appear, of their not commanding the attention which inherently they deserve.

Our Irish correspondent, in the communication from him which appears in our columns to-day, calls our attention to a subject which has recently been under the consideration of the Council of the Incorporated Law Society of Ireland. The subject is one equally interesting to the profession in this country. It appears that last session there was introduced into Parliament a Bill, to the effect, amongst other things, that the solicitor to the Irish Ecclesiastical Commissioners should be paid a salary; but that, as against other parties dealing with them, he might be entitled to charge costs; for which, however, he was to account with the Board of Commissioners, who, in fact, were in all cases directly, by virtue by the Act, to receive the costs. The Council of the Irish Incorporated Law Society, in their report which has been published, state, as no doubt they are justified in stating, that the "principle involved in such clause was novel, and unless sanctioned by the authority of an Act of Parliament, would be illegal." Fortunately, the Council observed the clause in time to petition for, and obtain, its removal. The profession on this side of the Channel may well share the surprise of their Irish brethren, and participate in the interest which this topic has excited amongst them, not merely on account of its novel character, but because it has been the fashion of late years for our Government to favour Ireland with the first introduction of such novelties—perhaps as experiments *in corpore vili*—with a view to their importation into this country at some future time.

Those persons who were shocked at the recent dreadful accounts which have appeared in the papers of colliery explosions, will be glad to hear that the Act for the Regulation and Inspection of Mines, 23 & 24 Vict. c. 151, which was passed last session, will come into force on the first day of the new year. The Act con-

tains a code of valuable general rules to be observed in mines, and prescribes the powers and duties of inspectors.*

It is announced that the next meeting of the Law Amendment Society will be held on the 17th instant. A paper will be read by Mr. Edward Webster, entitled, "Observations on the Report of the Select Committee of the House of Lords, 1856, relating to the Expediency of carrying into effect the Sentence of Death before official spectators only, and on a substitute for Capital Punishment." Lord Stanley is to take the chair.

The next meeting of the Juridical Society will be held on Monday, the 17th inst., at 8 o'clock, p.m., when Mr. S. M. Leake will read a paper on "The Taxation of Suitors."

RELATIVE AUTHORITY OF CO-ORDINATE COURTS

In the constitution of a judicature consisting of numerous courts arranged in co-ordinate and subordinate ranks, it becomes essential to the harmonious working of the system to arrive at an exact understanding concerning the relative authority of their respective decisions. The common law remaining altogether in an abstract unwritten form, and statute law, though written, involving innumerable doubts and uncertainties of construction, the judgments of the courts contain the only authoritative declarations of the former, and the only authoritative expositions of the meaning of the latter. It is true, the judgments of the courts are not law in point of form, since they do not emanate from the voice of the Legislature; the function of the Court being *jus dicere* and not *jus dare*. But they are law in substance, since they are the authoritative assertion or declaration of what the legislative power has ordained. With respect to the common law, they are an original embodiment in language of its precepts and principles; with respect to the statute law, they either repeat the word of the statute, or, where that speaks with an uncertain voice, they paraphrase in clearer language its real intention; and within the scope of their declaratory powers they form the only criterion by which the public can regulate its opinion of the law. Hence, where the judicial oracles are numerous, it becomes a matter of great importance, in the interests of certainty, to ascertain with what degree of authority each oracle speaks.

It might be expected from this character of the sources of our law that a large field would remain undefined by judicial decision; but it is certainly remarkable that the question before us respecting the relative authority of courts seems still to lie in the regions of uncertainty. It is amongst the subjects left by our law entirely to judicial exposition; and it is one to which judicial deliberation has been very imperfectly applied. For instance, amongst mooted points may still be enumerated the questions: How far a court is bound by the authority of the previous decision of a court of co-ordinate jurisdiction? How far any court is bound by its own previous decision—in the case of an inferior court, and in that of a Court of Appeal? What is the position of a court of ultimate appeal, as the House of Lords, with respect to its own previous decisions? These are questions of which the settlement is of material importance to practitioners, and therefore they seem well worthy of a brief consideration. We propose first to take in hand the question concerning the relative authority of courts of co-ordinate jurisdiction.

It will perhaps serve to clear this question of some confusion, if we begin by observing that this is not a question of the value and weight of precedents, upon the usual grounds of reasoning by which precedents are estimated. A precedent is followed because, so long as it has prevailed, it must have affected in some degree the conduct and dealings of the public, and must have been received with more or less of acknowledgment or acquiescence; and the weight of a precedent is measured chiefly by the degree of acquiescence with which it is received. In this sense, every judgment of a properly constituted tribunal becomes a precedent to every other tribunal; and even the judgment of an inferior court becomes a precedent for the guidance of a superior court, or a court of appeal. This characteristic effect of a precedent, even in a court of error, was well explained by Parke, B., in the judgment which overruled the celebrated case of *Godsall* v. *Boldero* (*Dalby* v. *India Life Assurance Company*, 24 L. J., C. P., 2):—"Though we are quite satisfied that the case of *Godsall* v. *Boldero* was founded on a mistaken analogy and wrong, we should hesitate to overrule it, though sitting in a court of error, if it had been approved and followed and not questioned, though many opportunities had been offered to question it. We do not think we ought to feel ourselves bound by it, as so few, if any, subsequent cases have arisen in which the soundness of the principle then relied upon could be made the subject of judicial inquiry, and as in practice it may be said that it has been constantly disregarded."

A judgment of a superior court, however, is cited before an inferior court, not merely as a precedent or argument which may be accepted or repudiated, but as an authority which can only be obeyed. The sub-ordinate court defers to the judgment of the super-ordinate one, not from a submission of conviction, but in obedience to its higher authority. What, then, is the relation with respect to mere authority subsisting between co-ordinate courts? When a judgment of a co-ordinate court is cited, is any submission due to its authority irrespective of the weight which it may reasonably bear as an argument from precedent? This seems to be the precise form of the question, which is so constantly intervening in practice where the same or similar points are discussed before the several co-ordinate courts.

The solution of this question, upon grounds of principle, seems to rest in the conception of co-ordinate courts; and this conception may be elucidated in the manner most suitable for our present purpose by the state of the courts actually referred to under that designation. The three superior courts of common law are commonly thus described, and so likewise are the Vice-Chancellors' courts in equity. Now the former at the present day all exercise necessarily the same jurisdiction, and stand in precisely equal rank or order in the constitution of the judicature. Their civil jurisdiction, originally very different, have, first by various strange self-originated devices and fictions, such as writs of *quo minus*, *latitat*, and bills of Middlesex, and ultimately by statutes settling an uniformity of process, attained precisely the same limits. The age of rivalry, conflict, and usurpation of jurisdiction between these courts, has passed away; and there is now one jurisdiction, one procedure, virtually one court, though for the convenience and despatch of business, three chambers—a state of things which seems imperatively to demand a uniformity of decision. The courts of the Vice-Chancellors in equity have been created with the

* A useful treatise on all the statutes passed for the regulation of mines has just been published. It is entitled, "An Exposition of the Statutes (5 & 6 Vict. c. 99, and 23 & 24 Vict. c. 151) passed for the regulation of Mines, Collieries, and Ironstone Mines, designed as a Practical Guide for Official Inspectors, Owners, Viewers, Captains, Managers, and Agents, with reference to Governmental inspection, and the employment of Mine Labour under the above statutes; also a notice of the Truck Act (1 & 2 Will. 4, c. 37), and a carefully prepared form of Pit Bond, with Notes and Appendix of the above statutes, and a copious Index." By Thomas Tapping, Esq., of the Middle Temple, Barrister-at-Law. Stevens & Sons.

same exact uniformity of position, procedure, and jurisdiction, and therefore, it would seem, with the same necessity for the uniformity of decision. The two sets of courts, of common law and of equity, relatively to each other, are also commonly treated as co-ordinate; but though they may be ranked in position at the same level and dignity, they exercise jurisdiction of so different a description, that the judgments of the one can be seldom applied in any useful manner to the guidance or regulation of the other. Inasmuch, however, as courts of law have in some matters an equitable jurisdiction and conversely, to that extent the jurisdiction of the two sets of courts is the same; and, according to the best opinions, the decisions of the one are accepted by the other as binding authorities. As to courts inferior to these, such as county courts, magistrates' courts, &c., though strictly speaking they might be termed co-ordinate, yet, as they are instituted simply for the dispatch of small business, and not at all for the settlement of the law, difficult points of law arising before them being readily referred to superior tribunals, it would be mere pedantry to include them in the same category, or to attempt to subject them to the same considerations.

There is no doubt that every court is constituted in point of form with the power of delivering an arbitrary judgment on a matter within its jurisdiction; so that it has the power to decide contrary to a previous judgment of a co-ordinate court, and even of a court of appeal. But this power is entrusted to the court to be exercised according to a judicial discretion; and the real question is not as to the bare power or possibility of deciding, but what is a right and proper exercise of the power according to the discretion of a good judge. This distinction between mere formal power and the discretionary rules imposed upon its exercise is well recognised in many branches of the political constitution. Discretion tempers the exercise of power, as equity modifies the law. Thus, the Crown in point of form can refuse assent to a Bill which has passed both Houses of Parliament; but discretion peremptorily forbids the exercise of such power. The House of Lords has the power formally to propose and amend a Bill relating to taxation; but the rules of discretion, founded on the inexpediency and futility of so doing, prohibit any such interference with the prescriptive privilege of the Commons. With respect, therefore, to the submission of a court to another court of co-ordinate jurisdiction, the question seems to be, what are the rules of discretion which intervene to guide the exercise of the absolute power of judging under the circumstances of the matter having been already adjudged by a co-ordinate court?

These rules are to be sought for and deduced from the practice of the courts, and the language of the judges in reference thereto; and a careful consideration of the precedents and practice on the subject appears to justify the following position.* The general rule of practice is that, where a deliberate judgment of a co-ordinate court subsists unreversed it must be followed; and no further argument will be heard on the same point. Counsel may distinguish their case from the authority; but they may not dispute the authority except in a court of appeal. The practice of the courts in this matter is of every day occurrence, and is nearly invariable. Exceptions, it is true, have occurred in certain extreme cases; but they are so rare as to be almost capable of a particular enumeration. At any rate they have not as yet been frequent enough to have called forth any rule to account for their occurrence; and the tendency of modern practice is to carry out the above general rule with the utmost strictness. It may, however, be suggested with probability that the deliberate deviations from the general rule are restricted to cases in which the previous decision has manifestly emanated from mistake or inadvertence, and in which the Court itself would obviously, on being further advised on a future occasion, wish, if possible, to recall its own judgment. It may also be suggested that a Court would probably be much more cautious and respectful in dealing with

* The following authorities may be cited in support of this and other positions taken in the above article. The Common Pleas having decided, in *Selby* v. *Eden*, 3 Bing. 611, that the simple acceptance of a bill drawn payable at a particular place was a general acceptance, the same point was soon after brought before the Queen's Bench; and Lord Tenterden, C. J., delivering the judgment of the Court said, "I should certainly have entertained some doubt had it not been for the authority cited (*Selby* v. *Eden*). It is of great importance that there should be uniformity of decision in the different courts of Westminster Hall, upon all questions, but particularly upon questions affecting negotiable instruments of this description. Upon the authority of that case, therefore, we are of opinion, &c."

A great difference of opinion recently prevailed as to whether special contracts with carriers were within the Railway and Canal Traffic Act. In *Wise* v. *Great Western Railway Company*, 25 L. J. Ex. 258, the Exchequer having delivered judgment on grounds independent of the above point, added an opinion upon it, also sufficient to decide the case in the negative. In *Simons* v. *Great Western Railway Company*, 26 L. J. C. P. 25, the Common Pleas considering the point open, notwithstanding the opinion of the Court of Exchequer, expressly decided it in the affirmative. The point then came before the Queen's Bench, in *Peek* v. *North Staffordshire Railway Company*, 27 L. J. Q. B. 465, where the judges differed. Lord Campbell, C. J., and Crompton, J., concurred with the Common Pleas, the latter saying in his judgment, "I should feel myself bound by this decision of the Court of Common Pleas if I had arrived at a contrary conclusion; and I should have contented myself with merely stating that I felt bound by the decision of the Court of Common Pleas if I had not known that one of my learned brothers in this court and some of the learned members of another court take a contrary view." Erle, J., thought that the case in the Exchequer amounted to an authority, and therefore considered himself, he said, at liberty to dissent from the Common Pleas.

In the case of *Chapman* v. *Monmouthshire Railway Company*, 27 L. J. Ex. 97, Willes, J., having ruled at Nisi Prius in accordance with his own private opinion contrary to the judgment of the Queen's Bench, the full Court, on the case being referred to it, delivered the following judgment by the Chief Baron:—"We have consulted with my brother Willes, who states that he intended to decide contrary to the case of the *Queen* v. *London and North Western Railway Company*, we are bound to decide in accordance with that case." [And see further as to this point, *Powell* v. *Jessop*, 25 L. J. C. P. 199; *Taylor* v. *Burgess*, 5 H. & N. 1; and innumerable other cases.]

Jackson v. *Woolley*, 27 L. J. Q. B. 181, was an instance of the Court of Queen's Bench following the decision of a Vice-Chancellor. Kindersley, V.C., had decided that the 14th section of the Mercantile Law Amendment Act was retrospective; and upon the same point being brought before the Court of Queen's Bench, it held itself bound by that decision. Lord Campbell, C. J., said, "We are bound by the decision in *Thompson* v. *Waithman*. We express no opinion upon the proper construction of the Act, as far as this court is concerned it is *res integra*, and the plaintiff must go to a court of error if he wishes to review that decision." The decision was reversed in the Exchequer Chamber, where Williams, J., delivering judgment said, "The Court of Queen's Bench were quite correct in bowing to the decision of the Vice-Chancellor in *Thompson* v. *Waithman*, a court of co-ordinate jurisdiction."

In *Jones* v. *Harrison*, 6 Ex. 328, the Court of Exchequer construed the word "may" in the 13th section of the County Court Act, 13 & 14 Vict. c. 61, as discretionary. In *Mac Dougal* v. *Paterson*, 11 C. B. 755, the Court of Common Pleas held it to be obligatory, because, as it said, the former decision led to manifest absurdity and repugnancy, and the Court of Queen's Bench, in *Crake* v. *Powell*, 21 L. J. Q. B. 183, followed the Common Pleas. The Court of Exchequer subsequently expressed the intention of reversing their decision, and abiding by that of the other courts (*Asplin* v. *Blackman*, 21 L. J. Ex. 78).

In *Cook* v. *Gillard*, 1 E. & B. 83, the Court of Queen's Bench decided upon the construction of a statute contrary to the judgment of the Court of Exchequer in *Ivimey* v. *Marks*, 16 M. & W. 643, on the ground that the latter court had manifestly decided under a mistake arising from their not adverting to certain legislative changes in the law

the decision of another Court, than it would in reviewing its own.

The general rule which compels a Court to bow to the decision of a Court of co-ordinate jurisdiction seems also to be based upon grounds of expediency and public convenience. Certainty is a high qualification of law; and this rule eliminates one element of uncertainty by preventing the collision of co-ordinate courts and a conflict of judicial opinions. It is said, on the other hand, that to prevent one court from questioning and impugning the decisions of another, tends to aggravate and perpetuate the evils of doubtful or bad law. It is true, a subsequent contradictory decision would serve to throw increased discredit on a previous one already discredited by public opinion; but it would not get rid of it in the same way that it is overruled by a court of appeal; it would only alter the degree of doubt without removing it, and would necessarily involve a recourse to further proceedings. The rule in question guards all decisions equally, good and bad, from being subjected to doubt, except in that way in which alone the doubt can be usefully and effectually raised. It sends the doubt at once to the court of appeal, which alone could decide between conflicting decisions; and it thus avoids unnecessary and objectless litigation, which would otherwise be interposed in the course of a suit.

The contrary rule, operating equally on all decisions, whether good or bad, would open to dispute and litigation nearly every proposition of law, and would invite as many different opinions as there are judges. The attention of suitors would be turned to the idiosyncracies of the courts and judges, rather than to the simple object of a final decision of the cause. To allow a decision to be called in question whenever it suited the circumstances of a suitor, or of his legal advisers to do so, would increase expense and prolong litigation. The ensuing diversity of opinions would introduce uncertainty throughout the whole of the law; the public would be greatly embarrassed in their conduct and affairs; no titles would be safe; and no transactions could be sufficiently guarded.

GOVERNMENT BILLS.

This is the season of the year when cabinet councillors go through the unwelcome duty of reviewing their legislative failures of the preceding summer. In the present autumn, notwithstanding the apology has been offered to constituencies, that a greater number of useful legal reforms have been made during the 23 & 24 Vict. than for many a year past, the chiefs who are responsible for the Parliamentary programme must deliberate, in view of the next session, under a consciousness that the successful law measures of the last were principally the work of independent members, while the unsuccessful and the abortive were precisely those which had been heralded in the Queen's Speech. Her Ministers, then, have had ample reason for discussing at their recent meetings the causes of miscarriage, not only such as were of a party and personal nature in the House, but also the technical causes inherent in the Government system of drawing Bills. With the struggles for majorities, or the winning arts of debate, we are not much concerned. The policy, too, of each proposed law measure must, of course, be judged on its own grounds. But the frame of legislation, whether relating to professional or other matters, involves abiding general principles, the neglect of which is a subject peculiarly belonging to a legal journal. Among them there is one principle necessarily underlying whatever plan, in the vacancy caused by the loss of Mr. Coulson, may be adopted for securing, or attempting to secure, accuracy, completeness, and consistency, in Government as well as other Bills.

Whether a Parliamentary officer or committee, a commission or a minister of justice, be constituted to preserve order in the Statute Book, no success can be accomplished without a proper division of labour between the authors and the framers of measures. A clear perception of the difference between the functions of the legislature and of the draftsman would tend to allay even the jealousy which Parliament is supposed to feel at the apprehended interference by any new machinery with the free exercise of its sovereign powers and privileges. The confusion which has hitherto existed between official and professional responsibilities, in preparing the work of legislation, has encouraged an ill-defined alarm, that the latter cannot be regulated without encroaching on the former. At the same time such confusion has been in a high degree detrimental in weakening the responsibilities themselves.

When a Bill originates with a public department, the instructions in different cases vary exceedingly in their form and detail. They do not generally go much into particulars. To the conveyancer employed is left the speculative task of giving effect to the intentions of the introducers of the Bill. So loose is the system, that frequently the instructions come orally from a Secretary of State: most frequently, indeed, there is neither signature, nor date, nor any writing at all. Thus unauthenticated they are sometimes not communicated to the draftsman by the head of the department. A secretary or subordinate is employed as the precarious go-between. He may or may not be imbued with the policy which prompted the measure, or be master of its general bearings, or comprehend its particular operations; yet he is customarily the medium between the intelligence which conceives and the intelligence which imparts substance to the conception.

It requires no very special knowledge to be in a position to appreciate the practical effect of such inexactness of duties. The head of a department originating a Bill is satisfied mainly with a conviction of the principle on which it is to be based, and does not extend his contemplation beyond the disturbance which it may produce in the interests represented by one troublesome deputation and another, which has recently quitted his presence. If, in addition, he has suggested clauses sufficient to guard against the Scylla faction on the particular question in the opposition, and the Charybdis faction among his own supporters, he passes on to other business with a consciousness of having done his duty not only as a legislator, but as a party man. The parliamentary scribe will look to the rest, and design and fit all the secondary and minuter parts. The draftsman, on his side, receives the political, commercial, or legal hints, as the case may be, vouchsafed from high quarters, with his head full of precedents and forms, but in comparative, if not total, ignorance of the actual circumstances in which the measure is to work. The Bill is thus drawn in perfect harmony between the two. Neither gives the other any vulgar trouble upon it. If the lesser artist's professional precedents do not happen to square with the greater artist's official exigencies, it is altered accordingly. "I do not, of course," Mr. Coulson told a select committee, "raise any controversy with him; I say, I have no doubt misunderstood you." If anything should be wanting, there will still be the "many cooks" in committee to supply their ingredients. What must be the result on the Statute Book of this easy-going division of labour? What would have been the result on steam locomotion, if, thirty years ago, Robert Stephenson had instructed a founder that steam pressed at so much a square inch: "I want something to run upon wheels by steam; you will see to the cylinders, cocks, valves, and all that!" It requires, we say, no special knowledge to judge of such a system. But they who know by experience, how crude, for the working purposes of life, is the production of a conveyancer whom a client, under some unusual pressure of circumstances,

has instructed, by an endorsement on a blank sheet, or at the foot of some hasty half dozen paragraphs, to draw a Bill in Parliament, a partnership deed, or a settlement, how much the draftsman leaves in blank, how many queries he puts in the margin, how cautious the reservations he makes in his approval, and how many conferences will be needed by the solicitor with his clients on the one hand, and with his counsel on the other, and finally, with both together, before the machine runs easily on its wheels at the proper gauge. Anyone who has experience of all this, can well form an opinion as to what sort of laws the public is justified in expecting from Government Bills.

The steps to be taken for remedying this state of things have not, we believe, been decided upon by the Government. In coming to a decision, account must be taken, not alone, of the multifarious duties which, as we recently showed, pressed upon the late Mr. Coulson. There must be organised distinct machineries, one, departmental, for designing Bills, with a view to their safe and effectual operation in detail, and another, general, for drawing Bills, in order that the intention may be precisely carried out in enactments worded effectively and in harmony with the rest of the statute book. To constitute the latter organization for putting legislative measures into bodily shape, not one man or any number of individuals will avail. There must be some kind of parliamentary conveyancing staff brought into action, consisting of members representing the several offices of the State, and worked in combination by a chief. Their speciality would be knowledge of the statute law for the purposes of, so to say, tending and keeping the Statute Book in its annual growth. There are, doubtless, difficulties respecting the particular time and mode of the action of such a body during the pendency of a Bill, so as not to impede or cripple the function of the Legislature itself. We think them overrated.

These difficulties must be overcome. The plain course would appear to be, to refer all Bills to the conveyancing body, through a joint standing committee of both Houses, as a last stage before the Queen's assent. Alterations made in this stage might be communicated to the Speaker and to the Lord Chancellor, who would notify them to the respective Houses. Within a limited time, any member, who saw reason, might move upon the alterations; otherwise the Bill, as altered, might pass for the Queen's assent. We shall be answered, that the greater number of the Bills of a session are passed in the last ten days of it, and that then time fails for a conveyancing review of them. The only reply necessary is, that such a review would tend to substitute order in the place of that indecent and mischievous scramble, with which the adult Westminster school now usually breaks up for the holidays.

STATISTICS OF THE BANKRUPTCY COURTS FOR 1859.

The statistics of the bankruptcy courts for the past year are tabulated under the three distinct heads of bankruptcy, proceedings by private arrangement under the control of the court, and proceedings for winding up joint stock companies. Under the first head the petitions for adjudication by creditors in the London and seven provincial courts numbered 648; the petitions for adjudication by traders against themselves, 314; of both of which classes of petitions 912 were prosecuted to adjudication; while the number of petitions for private arrangement under the control of the court, upon which adjudications in bankruptcy were made, was only 31. The total number of persons declared bankrupt under these proceedings, whether trading singly or in partnership, amounted to 1,054, of whom 893 passed their last examination.

The total amount of debts upon the balance sheets in the foregoing cases was £3,645,037. The bankruptcies ranged as follows:—21 were for sums under £300; 70 were under £500; 222 under £1,000; 439 under £5,000; 73 under £10,000; 31 under £20,000; 22 under £50,000; 2 under £100,000; and 3 above £100,000. Of this large amount, which averages in each case £4,081, or £29 0*s.* 6*d.* per cent. on the balance sheets, £1,057,834 were realized by the court, after deducting from which £118,641 for special charges, such as mortgages, rents, &c.; £939,193 remained for administration. Of this sum the bankrupts' allowance formed £1 13*s.* 6*d.* per cent.; excepted articles, 19*s.* 8*d.* per cent.; accountants' charges, 18*s.* 8*d.*; solicitors' charges, £13 19*s.* 2*d.*; court per centage, £3; remuneration and expenses of official assignees, £5 6*s.* 6*d.*; brokers' charges, 11*s.* 3*d.*; auctioneers' charges, £1 14*s.* 5*d.*; messengers' charges, £2 14*s.* 3*d.*; other charges ordered by the court, and including sums expended for carrying on trade, &c., £2 13*s.* 9*d.* All these expenses reduce the total for dividend by one-third (£33 11*s.* 2*d.* per cent.).

This great expense of administration is what has occasioned the chief complaints against the existing system of bankruptcy. The official assignees and the accountants appear to be exceedingly overpaid. The court per centage should of course be abolished, there being no argument in favour of a tax upon persons already burdened by the defaults of the bankrupt. The miscellaneous item is not so much an expenditure as a deduction from the receipts; for special payments surely are payments nevertheless, and not preliminary costs of administration. The bankrupts' allowance and the excepted articles in like manner are a deduction from receipts, and not an element of expenditure. The real expenses, therefore, are only £28 4*s.* 3*d.* per cent. This, if reduced by the abolition of the court per centage, and by a reduction of the remuneration of the official assignees to a reasonable scale, would not leave the costs of administration much beyond £20 per cent. Indeed, these two deductions are alone, strictly speaking, expenses of administration; and although they are equally lost under any denomination to the creditors, yet these should remember that the speedy conversion of a trading estate into cash cannot be effected with the ordinary cost of collecting debts. The official assignees, however, as appears by a letter from one of the Birmingham district in the *Times* of the 12th November last, enjoy most profitable stations. In 1858, of the four official assignees at Birmingham one realized £4,960, the others £4,000. The writer, however, referring to the solicitors' costs, which he considered the more odious item, stated, that the estimate of those he gave would become much greater if two or three estates of exceptional magnitude were excepted out of the list. Such an exception, however, would militate only against the assignees, inasmuch as it shows that the remuneration of these officers so far bore no relation to the work done by them; while it would prove the contrary as to the solicitors' costs, which, nevertheless, we should be glad to see at as low a figure as the effective discharge of professional duties may admit. Debts were paid in full to the amount of £8,990. The remainder of the total realised was paid away in dividends, being an average of £18 17*s.* 1*d.* per cent. on the total debts in the balance-sheets, and £73 3*s.* 5*d.* on the amount realised for administration. The dividends were made as follows:—In 373 cases there was no dividend; in 610 cases the dividend was under 2*s.* 6*d.*; in 231 cases it was from 2*s.* 6*d.* to 5*s.*; in 100 from 5*s.* to 7*s.* 6*d.*; in 47 from 7*s.* 6*d.* to 10*s.*; in 36 from 10*s.* to 15*s.*; in 4 from 15*s.* to 20*s.*; and in 20, upwards of 20*s.* The certificates granted were, first class immediate, 100; second class, immediate, 390; suspended, 59; third class, immediate, 216; suspended, 10. Certificates were refused in 10 cases with protection; in 20 cases

without it. The commissioners noted the apparent causes of the bankruptcies. They attributed 295 cases to reckless and unsound speculations and excessive trading; 124 cases to interest, discounts, accommodation bills, and suretyship; 323 cases to incompetence, neglect, and personal extravagance; thus attributing only 145 cases to unavoidable misfortune. There were 43 appeals, 7 of which were in one case; in 21 the judgment was affirmed; in 12 reversed; in 7 varied; and 3 were pending or abandoned. The proportion of the business transacted in the several courts was as follows:—in the London Court, which has 5 commissioners, 48·1 per cent. of the cases were determined; in the Birmingham, Court 15·3 per cent.; in the Leeds Court, 10·9; in the Liverpool Court, 8·2; in the Bristol Court 6·4; in the Manchester Court, 5·5 in the Exeter Court, 3·7; and in the Newcastle-on-Tyne Court, 1·9.

A very remarkable difference appears in the proportion which the amounts of the dividends bear to the amounts in the balance-sheets in the different courts. Thus, in the Leeds Court the dividend was £66 17*s.* 2*d.* per cent. upon the amount of debt in the balance-sheets; in the Exeter Court it was £21 17*s.* 2*d.*; in the Liverpool Court, £20 17*s.* 11*d.*; in the Newcastle-on-Tyne Court, £20 7*s.* 4*d.*; in the London Court, £15 11*s.* 8*d.*; in the Manchester Court, £13 3*s.* 7*d.*; in the Bristol Court, £12 5*s.* 3*d.*; and in the Birmingham Court, £9 1*s.* 4*d.* It is an interesting question in the philosophy of trade, but not appertaining to our province, to investigate the local and specific causes which thus diversify the ratios of solvency of which Leeds and Birmingham are mutual antipodes. It is unpleasant to find the ratio so small in London, in which so large an amount of the failures occurred; while Liverpool is steady, notwithstanding the varied speculations of which it is the centre.

The bankruptcies gazetted during the eleven months ending November 30 this year, amount to 1,141; being at the rate of 1,245 per annum. The ratio of this year is therefore above the average of the last ten years, which was 1,090. The returns of the several districts for the last eleven months are as follows:—London, 569; Birmingham, 185; Leeds, 100; Bristol, 88; Liverpool, 63; Manchester, 57; Exeter, 45; and Newcastle, 34. These figures indicate still further tendencies in London and Birmingham to rise above the average in the other districts; while Liverpool and Manchester show symptoms of progressive advancement in this as in the other features of their trade.

The proceedings by private arrangements under the control of the court without bankruptcy for obtaining protection for person and property until further order, and release, if necessary, from imprisonment under statute 12 & 13 Vict. c. 106 were for the year 1859 as follows: Petitions filed and followed by proceedings of this latter character exclusively without an adjudication of bankruptcy, 93; petitions in course of prosecution during the year, under which resolutions of creditors have passed for vesting the estates of the petitioners, 66; of which 35 cases were without the intervention of the official assignees, being carried out by private trustees. The total number of petitioners, whether trading singly or in partnership, was 123. The total amount of the debts in the balance-sheets filed by the petitioners was £921,154; and was classed as follows: 6 petitions were for debts under £1,000; 29 under £5,000; 8 under £10,000; 8 under £20,000; 4 under £50,000; 3 under £100,000; and 2 above £1,000,000. The total amount received in this department by the official assignees for administration was £43,541. The expenses of the administration of these assets were the comparatively moderate sum of £6,057, or £13 18*s.* 2*d.* per cent. The special charges for rent, &c., amounted to £3,268; and debts of the total amount of £4,117 were paid in full. After these deductions, the dividends were as follows:—in three cases, nil; in 14, under 2*s.* 6*d.* in the pound; in 9, under 5*s.*; in 10, under 7*s.* 6*d.*; in 2, under 10*s.*; and in 2, 10*s.* and upwards. The number of certificates granted approving of the resolutions of creditors under section 216 of the Bankrupt Act, 1849, was 70; the number of certificates granted of the resolutions having been carried into effect was 16. As to arrangements by deed, there were 13 petitions filed, and 12 orders made.

The amount of the debts bear no relation to the gross produce of the estates, in cases where the official assignee is trustee alone, or jointly with others, returned as £31,531. The estates which were assigned to, or vested in, trustees, or in which a composition was paid by the petitioner without the intervention of the official assignees, being practically withdrawn from the control of the court, no returns of the dividends appear. The court should, we think, in future enforce a return and record of the dividends in these cases, in order to supply statistical data for the guidance of the Legislature as to the degree of favour which private arrangements should enjoy in comparison with judicial adjudication.

We consider that private arrangements cannot meet with too great favour. The more extensively the *laissez faire* principle is applied in judicial as well as in ordinarily commercial matters, the more nearly will positive legislation approach precision in its enactments, and success in its application; while a redundant statute book is its own greatest impediment.

The profession would not suffer any loss by this divergence of a portion of the existing business in bankruptcy into a civil sphere of judicature. On the contrary, we know that arbitrations, although a similar transference of the judicial, by no means form the least productive tributory to professional income. The proceedings under the Winding-up Act (statute 11 & 12 Vict. c. 45) for the winding-up of joint stock companies have fallen almost exclusively to the London Court.

The proceedings under the Winding-up Act (11 & 12 Vict. c. 45), for the winding up of Joint Stock Companies, have fallen almost exclusively to the London Court. The number of petitions under Winding-up Acts against, or by, such companies was 17; orders made, 11; petitions pending 27. The total amount of debts due by the companies was £223,794. Calls were made upon 2,234 contributories, amounting to £58,117, of which the receipts for calls are stated at £7,169; the gross produce of the estates was £180,316; special charges for rent, &c., amounted to £74,662; total received for administration, including monies received for calls, was £111,738; the total expenses of administration were £8,378. The amount of dividends ordered, nine-tenths of which were to debenture holders as preferential creditors at 20*s.* in the pound, was £100,482. Of the eleven orders made in the year for winding up 9 were in cases which have been completed, the dividends in which were under 2*s.* 6*d.* in the pound in 3 cases; under 5*s.* in 4 cases; and were 20*s.* in the pound in the remaining 2 cases.

The number of appeals was 4, in two of which judgment was affirmed, in 1 reversed, and in 1 was pending.

The questions which at present engage most attention in this branch of the law are the amalgamation of insolvency with bankruptcy, the sanctioning of private arrangements, the distinction of the unfortunate from the fraudulent debtors by a release from past liabilities as to all future acquired property, as also by certificates, or, on the other hand, penalties, and, above all, as a matter most in the power of the law to effect, though not in itself the most important, the lessening of the present expenses of administering the assets. With regard to the first head, we answer in the affirmative, without supporting this opinion

by arguments in detail; inasmuch as the *onus probandi* lies on those who seek the dismemberment of the law, and its administration in wholly distinct channels. The grant of a release as to all future acquired property should, we think, be determined not by the commercial or non-commercial character of the transactions of the debtor, but by his honest or fraudulent conduct. This could, we think, be better determined by the creditors, who would thus act as a jury determining a fact, than by the judge, in whom such a discretion would tend to bring the administration of the law into occasional conflict and discredit with the mercantile public.

The expense of punishing mercantile as well as all other species of fraud, should of course fall on the public. The comparative cheapness of transactions by private arrangement may suggest some means of reducing the expenses of the court, and, at all events, recommends this method of procedure to yet greater favour with the mercantile public.

In insolvency, 2,765 petitions were filed, 23 of which were by creditors. Of the insolvents, 23 had professions; 26 were officers of the army or navy; 88 clerks; 1,686 traders; 16 lodging-house keepers; 44 shopmen; 179 agents; 47 manufacturers; 176 mechanics; 88 graziers, farmers, millers, &c.; and 322 of other classes. There was a decrease of nearly one-fifth in the number of petitioners compared with the returns of the previous year. The low amount of the debts is a proof of the poverty of the insolvents, as the report observes; of more than one-half the total debt did not reach £500; and almost one-fourth had previously been insolvent or bankrupt; 484 once, 118 twice, and 14 above thrice. The debts ranged as follows:—

Under £100	213
£100 and under £300	781
£300 „ £500	562
£500 „ £1,000	598
£1,000 „ £3,000	414
£3,000 „ £5,000	62
£5,000 and above	73

The number of insolvents who appeared for hearing in the London Court was 799; in the county courts, 1,895. In the former court 7 petitions were dismissed on hearing; in the latter courts, 126. Adjudications for immediate discharge were made in 2,104 cases. The insolvents in the other cases were imprisoned for periods varying from one month to two years.

The number of estates realised was 196; the dividends declared thereon, £31,561 0*s.* 6*d.*; the average of each estate consequently was £161 0*s.* 6*d.* The expenses of the administration were in all £5,217 10*s.* 4*d.*; being for each estate £26 12*s.* 5*d.* The dividends averaged £8 8*s.* per cent. on the amount of the scheduled debts, and £12 15*s.* on the amount ascertained for dividend, and varied as follows:—

Under 1*s.*	56
1*s.* and under 2*s.* 6*d.*	70
2*s.* 6*d.* „ 5*s.*	40
5*s.* „ 10*s.*	19
10*s.* „ 15*s.*	4
15*s.* „ 20*s.*	4
20*s.*	7

Besides the foregoing cases, the debtors in 36 other instances cleared off their debts amounting to £54,576 12*s.* 8*d.* either by payments, or by having obtained releases.

Under the Protection Acts, a trader, whose debts are under £300, is enabled, upon filing a petition containing a schedule of his debts and property, to obtain an order protecting him from arrest; whereupon his property is vested and administered as an insolvency. The total number of petitions under these Acts was 2,820. The amount of the scheduled debts was

Under £100	750
£100 and under £300	256
£300 „ £500	118
£500 and under £1,000	417
£1,000 „ £3,000	234
£3,000 „ £5,000	223
£5,000 and above	141

Compared with the proceedings in insolvency, these debts, as is noticed in the report, are of a higher average; and the previous insolvencies and bankruptcies proportionately less; of those previously before the Court there were 221 once; 27 twice; 7 thrice; and 2 above thrice. The number who appeared for hearing was, in the Insolvent Court, 971; in the county courts, 1,746; in the former court, 56; and in the latter courts, 238 petitions were dismissed on hearing. The relative amount of business in insolvency matters transacted in the Insolvent Debtors' Court and the county courts was as follows:—

	Insolvent Court.	County Court.
UNDER THE INSOLVENCY ACTS.		
Petitions filed	821	1,944.
Insolvents who appeared for hearing	799	1,895.
Estates realized	73	123.
Proceeds whereon dividends declared	£10,582	£20,978.
Amount of scheduled debts.	£125,564	£187,919.
Debts satisfied by payment, or otherwise	£21,762	£32,813
UNDER THE PROTECTION ACTS.		
Petitions and schedules filed	1,038	1,782
Petitioners who appeared for hearing	971	1,746
Estates realized	124	368
Value of estates, debts, and effects realized	£6,190	£13,602.
Scheduled debts	£77,731	£148,711

Imprisonment for debt was unknown to our common law, and is a statutory graft from the Roman jurisprudence, as shown *ante*, p. 85. Such a law is a bounty upon improvident credits; while, like an extortionate usurer, it makes the borrower pay much more than the value of the risk incurred by the creditor.

The grant of a release from future liability, which is both a *tabula rasa* and a *tabula in naufragio*, if made dependant in all cases upon conduct, would strongly check rash speculations; while all healthy developments of commercial enterprise are amply provided for by the Act conferring a limited liability. All men are to some extent traders, as all are political economists. It is not the degree to which men carry their commercial transactions that should determine their right to undertake further enterprizes, but the honesty and prudence previously shown by them.

An eclectic amalgamation, therefore, of the best elements of the existing laws relating to bankruptcy and insolvency is alike recommended by the first and soundest principles of law and commercial science.

THE PRESENT LAW OF THE SETTLEMENT OF REAL PROPERTY—THE STATUTE DE DONIS.

[COMMUNICATED.]

Pending the achievement of a general consolidation of the law, the amendment of a few of its branches deserves earnest attention, even if considered as experiments only in the path of codification. Now, no statute, or rule of common law, is so extensive in its operations as the Statute De Donis. All settlements are based on it; the intricacies of Fearne are attempts to throw light chiefly upon the nature of this class of remainders, while contingent; while many of the vexed questions of real property law have been owing to the attempts of incumbrancers to secure their charges upon these remainders after they became vested. In order to show the necessity of repealing the Statute De Donis, and of converting all estates tail into base fees, with the superadded power to support a remainder, to be, in short, as easily settled or incumbered as estates in fee simple, I shall endeavour to characterise the peculiar and injurious incidents of an estate tail as at present protected by the law. In the first place, it is often difficult to determine

in cases of wills, whether a certain person has devised an estate in fee or in tail. But it is, of course, desirable to prevent a mistake of interpretation leading to evils which may be easily avoided. A tenant in tail, as regards his powers over the land, is equal to a tenant in fee. Then why should he not be at once deemed by the law as having, if not the entire, at least a base, fee, since he can, by executing a disentailing assurance, acquire the fee simple? The necessity of enrolment is a futile requirement of the law. It does not induce caution in the transaction, as it is subsequent to the execution of the deed, and differs, therefore, in its tendency, from sealing and delivery, which induce a degree of forethought. It is a sort of compliment to the intricacies of the old law of fines and recoveries, for which it is substituted; as if these stupendous fabrications could not be discreetly abolished, without some equally useless, but so far appropriate, monument to commemorate their legal career. Incumbrances upon estates tail are divisible into three classes, according as they are indefeasible, voidable, or void, as to the issue in tail. To the first class belong enrolled disentailing deeds, the substitutes for the ancient fines and recoveries; vesting orders in bankruptcy, and it is to be presumed, also in insolvency, and judgments prior to July 23, 1860. The second class comprises all conveyances of any estate or interest in the land not enrolled according to the 3 & 4 Will. 4, c. 74, and not against common right; for if the incumbrances be against common right, such as grants of rent, common, &c., then they belong to the third class, and are absolutely void on the death of the tenant in tail, and incapable of being confirmed by the issue, so as to maintain the priority of their date as charges upon the land. If only one form of incumbrances prevailed, such as judgments, whose lien on the land would be clearly defined by statute, the injurious operation of the statute De Donis would be in some measure blunted of its power to defeat incumbrancers. But, as incumbrances are created at present, it frequently happens that on the sale of an estate, the incumbrancers, who conceived that they had equal rights, are marshalled into three classes, as we have stated. Doubtless, they could have rendered their charges indefeasible by the proper legal machinery; but to create unnecessary differences in title and tenures, and consequently in the rights of incumbrancers, is to oppose barriers to the requirements of society, and is but an idle effort of legislation. The protective duties of trade were intended to serve some object effectually. The statute De Donis serves none. There is no difference between the rights of creditors on fee simple estates. Why should a difference between them be occasioned by a statute intended to serve only the issue in tail?

The classes of indefeasible and void incumbrances afford no room for comment. The rights of both these classes, however unequal, are certain and unambiguous. But the class of voidable incumbrances opens a wide field for litigation, in order to determine what constitutes in each case a sufficient confirmation. Besides, the third class consists itself of three varieties, which, respectively, require a claim, an entry, or an action, to avoid them. Thus a grant by a tenant in tail, which takes effect under an innocent assurance, not affecting the feudal seisin—such as the grant of a term, which does not affect the freehold—may be avoided by the mere claim of the issue, and the term or grant so claimed against, loses its priority for ever, to the advantage of subsequent incumbrancers. But a grant of the freehold by a tenant in tail remains valid, until defeated by the actual entry of the issue in tail; while, if the grant were made by a tortious assurance, a mode of conveying property now indeed abolished, an action alone can defeat it.

The natural priorities of incumbrancers upon estates tail are likewise disturbed by the operation of the law of remitter, which, although equally applicable to estates in fee simple, yet, owing to the voidable character of all assurances by tenants in tail, except by recovery or fine, or, at present, by deed enrolled—securities not unfrequently neglected from mistakes regarding title—is of more frequent practical occurrence as to estates tail A. B., a tenant in tail, in the year 1810, considering himself to be a tenant in fee, by a marriage settlement creates a new entail by purchase in the first son by that marriage, and also settles the estate to the usual uses of a marriage settlement, and dies, suppose, in the year 1850. The son, immediately upon his father's death taking place, is remitted, by operation of law, to the first entail, by which remitter all the charges of the settlement of 1800 are wholly avoided; so that, if the son wished, from affection, to restore his mother's dower, or his sister's charges, he should create these incumbrances anew, and postpone them to the incumbrances created by himself during his father's life. Yet, this is, perhaps, not an uncommon event; although, from the supposed obscurity of the law of remitter, it is, in point of fact, often ignored by all the parties affected by it, rather than submit to the expense of having their complicated rights finally determined by law.

The statute De Donis is the key-stone of our settlement of real property; yet it is even self-shifting, as is shown by the law of remitter, and thus causelessly disturbs the adjacent incumbrances. The repeal of this single statute would work a moral revolution in our law; its repeal would restore all estates of freehold to one denomination, leaving the quantity of estate and of beneficial interest wholly unaltered; its repeal would also remove the technical clogs to alienation, and many of the technical distinctions of legal phraseology; while, by leaving the estate tail a base fee only, and giving it power to support a remainder, the base fee would merge, when merger would be desirable, that is, when the intermediate limitations being exhausted, the ultimate remainder in fee would be the next limitation, and would meantime afford a sufficient *locus standi* for all the necessary limitations of a marriage settlement. When a difficulty is created by legislation, the obvious remedy is the repeal of the obnoxious statute, and not the accumulation of others. If the statute De Donis were repealed, leaving to the owners of the base fees, or fees conditional, all the rights at present enjoyed by tenants in tail of enlarging their estates, and removing all technical embarrassments to their alienation, a work of no ordinary magnitude would be accomplished. If a judgment also of a conclusive and indisputable nature, such as was given to such incumbrances by the 1 & 2 Vict. c. 110, without the subsequent enactments, became the standard mode of creating incumbrances, with a contemporaneous adoption of a system of registration for conveyances and judgments alike, the facility of alienating land would appear to be attempted with every probability of success. A facility of creating incumbrances, which are conveyances and sales *pro tanto*, and the practical abolition of the doctrine of notice, which alike impedes the transfers and incumbrances of land, are carollories from the foregoing data. A wholesale consolidation of our law being incapable of immediate accomplishment, I suggest, therefore, that its fruit be anticipated by instalments. If some comprehensive measures be considered at the present time to be enacted, and given to the public, as donations, to use a term of Lord Bacon's, to check their cry for a universal reform and as a foretaste of that *novum organum*, a general codification; or rather consolidation, of the law, a copious effusion of such partial donations would render experiments of a radical tendency altogether unnecessary. O.

[The writer of this article raises an interesting practical question; but appears not to have entertained the important distinction between estates tail general, and estates tail special.—ED. S. J.]

The English Law of Domicil.

(By OLIVER STEPHEN ROUND, Esq., of Lincoln's-inn, *Barrister-at-law.*)

I.

INTRODUCTION.

The word "domicile," or "domicil" as it is sometimes written, is of a modern introduction into our language, and should, if we have adopted it, I apprehend, to make it our own, be written in the latter mode, inasmuch as that spelling differs from that of all other words, having the same signification in other languages. It is not found in Johnson, but is in Todd's Johnson, extracted from an old work, but not having any meaning analogous to our interpretation. "Domicile" in the French, and "domicilis" in the Italian tongue, signify "a dwelling house;" and thus we have the verbs "se domicilier" and "fissare il domicilio" in those languages, signifying to settle in a place. The Latin "domicilium," I think, was not the same as "domus," although "domus" might mean something included in "domicilium." Littleton's Latin dictionary gives it "an abode," and quotes "sedes" from Cicero. But the word "house" refers more properly to the particular messuage or tenement, the particular structure in which we reside, than to the locality, town, village, parish, or country; whereas the "domicil" or "domicilium" includes that, and also takes in those other wider acceptations. It is not my purpose in the following pages to consider the laws of other countries upon this subject, except so far as they bear upon, and help to illustrate, the principle upon which our own proceeds; and I shall therefore touch upon them merely as I proceed, and as it seems to me necessary, to indicate the premises from which the different conclusions, hitherto arrived at by our judges and by our legislature, have been drawn. It seems to be at this moment in extreme doubt what is the proper definition of the word "domicil." Different interpretations have been proposed, and sought to be given of it. Sometimes it has been defined to mean "residence" only, sometimes "residence with an intention to remain," sometimes mere length of time—a number of years—spent in one place; but it is evident that all these only serve to shew the difficulty, without in the least removing it; and moreover, it is not by any means clear what "domicil" actually is, that is, under *all* circumstances. In America the question arises as to settlement and taxation. The mode in which the question arises in our courts of law or equity is usually with reference to the mode in which the property of a deceased person is to be dealt with, who has moved from place to place during his life, and who has to a certain extent, perhaps, acquired national or civil rights in more than one country. Thus a man born in England of English parents, and although he resides here for a few years of his early youth, possesses *ipso facto* an English domicil of *origin*; he then leaves this country for some other, either by emigration or otherwise, amasses property there, becomes a citizen of a state, or acquires the rights of a born subject of that country. In the meantime, circumstances have arisen that render a return to his native country expedient; either he finds it by the death of relatives and the acquisition of property proper that he should return, or knowing when he has enough, and having prospered in business, his mind reverts to his native soil, and natural ties which have been so long severed, and he returns and dies. This is the ordinary case, and although there are certain principles well recognised and established on the subject, yet it is obvious that even in such an apparently simple case circumstances may so vary one case from another in the same class, as to make it to the last degree doubtful how those principles apply to each; and in this it is that the present unsatisfactory state of the law upon this subject (for it must be admitted to be unsatisfactory) consists. The law of domicil may be said to be analogous to the law of construction, inasmuch as the various circumstances under which a man passes an eventful and roving life may be fairly compared to the various vagaries which fill men's minds, and flow from their pens with regard to the ultimate disposal of their property. On questions of construction, as we all know, the principles are well established, and the whole difficulty lies in applying them to the case before us; and although in both cases "intention" is the grand governing indication to proceed upon, we cannot look into the mind of the person otherwise than as appears by his acts and words, written or spoken, and these are often so contradictory that, instead of assisting us, they lead us into a far greater maze of uncertainty. There is likewise a farther analogy between the two cases, that in both, attendant circumstances are allowed to be called in aid to shew what the "intention" was, as a kind of corroborative evidence in the case, the only difference being that in the case of a testamentary instrument, we have a written foundation to go upon; whereas in a case of domicil, the acts, coupled perhaps with the letters of the party, are the basis upon which the question must be decided. Laws were framed, not only for the restraining of crime and wrongful acts, and for the preservation of property, but for the proper transmission of that property from one person to another, or failing that, that it should contribute to the national wealth, by escheat or forfeiture to the crown or sovereign power; and hence every member of a state, and every subject of a country, possesses property distributable and controllable by the laws of that country of which he is a subject. The question of his domicil thus naturally arises, and an important question it is, for the duties and taxes imposed upon the transmission of property are as different in different countries as the general scope of the legislative enactments, and to this even those distant lands which are under our government are not an exception; for it happens (I mention this by way of example) that legacy duty is not payable upon Indian property even within our own rule, neither is duty payable upon charitable bequests in Ireland, although a portion of the United Kingdom; and hence, so far, these, although component parts of one great scheme of government, are as much foreign countries as any other foreign state. All this renders the law of domicil as important as it is involved in uncertainty; and the author of these observations has considered that a volume bringing under the notice of the legal public the numerous branches of this subject somewhat more in detail than it has at present been brought may not be without its use, particularly when it is considered that both our peaceful and our warlike relations have with the wonderful march of invention in our own day contributed to render travel so facile, both temporarily and pecuniarily speaking; and to make national both personal friendships and ties of such a much more frequent and lasting character, than of yore between this country and the continent of Europe, even extending far into Asia; thereby also extending the probability of permanent residences by natives of all those countries in the others. The nice shades of distinction which have existed with regard to residence in foreign countries, are very singular to observe in the cases that have been brought for adjudication, and which distinctly go to show what it is that constitutes a domicil, although it may still be difficult to give it such a definition as will hit every case. Thus it has happened that every possible indication of intention has been shown to abandon a native country, and settle and reside permanently in a foreign one; where even the whole property of the individual has been invested in that foreign country, estates and titles purchased and large sums expended in ornamenting and beautifying the subject of the investment, and yet, if it so happened that possession was not actually taken, the

intention, though clear, and so fully acted upon, has been held not to be sufficient to constitute a domicil in that country. It also seems extremely doubtful what length of time could be fixed as the limit of residence to secure the abandonment of an original domicil, and the acquirement of a new one, or what would be sufficient to constitute an abandonment of an acquired domicil, and a reverter of the domicil of origin, although it appears clear as a governing principle, that whether the intention be proved to exist or not, there must likewise be some act to be regarded as a *factum* without which the *animus redeundi*, the *animus manendi*, or the *animus revertendi*, are of no avail. Many cases might be suggested other than those that have occurred, and we might speculate almost indefinitely as to what cases might arise, and what the view taken of the law as applicable to them might be; but it will be the aim of the author to classify the different branches of the subject under headings in a natural order, and consider and discuss each in its turn, laying down the principle applicable to each, and by illustrations of cases which have occurred, or might have occurred, lead the reader, at least to as satisfactory a deduction as the nature of the case will admit of, of the present state of the general law. In preparing these sheets, the use of notes will be as much as possible avoided, except, of course, as matter of reference; it being intended at the outset of every new heading to take as comprehensive a view as possible of that particular branch, and then to descend to its varieties and ramifications; and it will likewise be endeavoured so to systematize the whole as to render the index as complete and lucid as possible. Many cases have arisen where a party has absolutely abandoned either a domicil of origin or an acquired domicil, but dies before he has carried out his intention, either the death happening *in itinere* or immediately before or after he has fulfilled his journey; and in these cases questions of importance have arisen, whether there really was such an abandonment as would balance against a reverter of the domicil of origin, or whether the abandonment, assuming that there was such, could be sufficient to enable the party to acquire a new domicil merely by the act of abandonment; but the same principles which apply to the general subject likewise apply to this; and the only question, therefore, would be, what residence is, and what is abandonment? Lastly, there is no circumstance, however small, however apparently insignificant, connected in any way with the disposition, character, and circumstances attending the movements of the party whose domicil is in question, that must not be taken into account, and every particle of evidence obtained in the least degree capable of bearing upon the point. All these are considered "*indicia*," upon which to raise "probable presumptions" in the question of intention, and as "*indicia*" merely in the absence of evidence of intention on the question of abandonment or residence. The foregoing observations have been made with the object of taking in the whole scope of the subject, that in reading the different details the principles which must guide the judgment may not be forgotten. Property is disposed of either by the will of the owner, or by the law of the country to whose laws it is subject; and as in both cases certain duties are inevitable, and as they vary so much in almost every country, the domicil is an important question.

(*To be continued.*)

Members of the Scottish Universities are now admitted members of the Middle Temple without making a deposit of £100 on admission; and members of the Inn who shall at the same time be members of any of the Scottish Universities are entitled to keep a term by dining in the hall any three days.

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF COMMON PLEAS.

SECOND COURT.

(Before Mr. Justice WILLES.)

Dec. 7.—There was an illustration here to-day of the difficulty of unanimity in trial by jury. In an action for an injury sustained through a collision of a plaintiff's van with an omnibus the jury were divided, as was understood, 11 to 1, and after some discussion withdrew to consult in private. They were out for a long time, but were unable to agree.

DEFICIENCY OF JURORS.

In consequence of the above incident another jury was required, but only 11 could be obtained. The officer having called the list, and no one else answering, asked if any more jurors were present. A whole row of jurors were sitting quietly before the judge, but no one answered. The Judge said the plaintiff might pray a *tales de circumstantibus*, the *circumstantes* to be taken from the Queen's Bench or Exchequer jurors. Meanwhile, an usher returned with a Common Pleas juror, found after some search. It is believed that the practice of jurors not answering, in order to escape serving, is very common.

SHERIFF'S COURT.

Dec. 7.—A case came before the Court, in which the summons was marked "not served."—Plaintiff's agent said that defendant was a clerk in the General Post-office, and the judge was not aware of the great difficulty existing in serving a clerk.—The Judge: Am I to understand that the authorities of the Post-office throw obstacles in the way of a just recovery of debts? Whose district is this?—Mr. Coleman (one of the bailiffs): Mine. It is quite true. They will not call the clerks down; and a short time since they threatened to give me in charge. They sent for a policeman, and he refused to remove me as I was employed in serving summonses.—The Judge said he would grant a gratis summons, and would go on, if necessary, for ten years. Perhaps if the summons was served upon the Postmaster-General by post it might have some effect. It was then explained that the summons must be personally served. A gratis summons was thereupon granted.

The Queen has been pleased to appoint William Young, Esq., to be Chief Justice of the Supreme Court of the province of Nova Scotia.

Recent Decisions.

(*Equity, by* J. NAPIER HIGGINS, Esq., *Barrister-at-Law; Common Law, Criminal Law, by* JAMES STEPHEN, Esq., LL.D., *Barrister-at-Law.*)

EQUITY.

MORTGAGE OF SHIP—DUTY OF MORTGAGEE IN POSSESSION—SALE BY MORTGAGEE.

Marriott v. *The Anchor Reversionary Company*, V. C. S., 9 W. R., 89.

This is the first reported case in which the duty of a mortgagee in possession of a ship has been discussed. It is valuable, however, not because of any new principles or any modification of old principles applicable to the peculiar position of a mortgagee in possession of a ship; but as showing that in such a case the rules ordinarily applicable to any mortgagee in possession apply with equal force. The Merchant Shipping Act, 1854, (s. 70), provides that a mortgagee is not to be deemed the owner of a ship except so far as may be necessary for making it available as a security for the mortgage debt; and under sec. 71, every mortgagee of a ship has a power of sale. In the present case the defendants, who were mortgagees of the plaintiff's ship, took possession of it after default by him in payment, but did not sell the ship until after an interval of three months, during which time they regularly ran the vessel between London and Ipswich against the plaintiff's advice, and thereby suffered a loss. The plaintiff, therefore, sought to make the defendants liable for the value of the vessel at the time she was taken possession of by the defendants, and also

for the loss resulting from their subsequent trading. There was a further question between them as to the manner in which the sale had been conducted. The Vice-Chancellor Stuart decided the case upon the principles ordinarily applicable to the duties of a mortgagee in possession. "If," said his Honour, "a mortgagee who has property pledged to him and gets possession of that property uses it for the purposes of any speculation or adventure, and the speculation or adventure turns out a losing affair, the mortgagee and not the mortgagor must bear the result, whatever it may be, of that loss." His Honour further decided that the defendants were liable not only to such loss but also in the amount of the deterioration in value caused by such use of the ship. The Vice Chancellor's judgment, which is very elaborate, further contains some observations relative to the duties of mortgagees of a ship exercising their statutory power of sale, which are well worthy the attention of those who are interested in such matters.

It is a curious fact that no similar case is to be found in any of the reports either at common law or in equity; and the Vice Chancellor, perhaps on that account appears carefully to have avoided any dicta upon the general question as to the power of a mortgagee of a ship to take possession thereof—not for the purpose of sale, but for the purpose of realising his security by working the ship. His judgment as to this point proceeds entirely upon the ground of a speculative and adventurous employment of the ship by the mortgagees. Nothing appears to have turned in the argument upon the status of such a mortgagee under the provisions of the Act above alluded to; but it may be observed that the words of the 70th section favour the notion that a mortgagee of a ship—just as a mortgagee of real estate—is not prevented from taking possession of the mortgaged property for the purpose of paying the mortgage debt out of the profits of the mortgaged property by its use. That section treats him as the owner of the ship so far as may be necessary for making it "available as a security for the mortgage debt." The only way of accomplishing this object would be either by using the ship or selling it; but sect. 71 goes on to confer upon the mortgagee "power absolutely to dispose of the ship." However, admitting this to be the right construction of the Act, there must almost always be a difficulty in drawing the line, in the case of a ship, between what is speculative on the one hand, and what is bad management on the other. The most analogous class of cases, perhaps, are those relating to the duties of a mortgagee in possession of mines, where the mortgagee is allowed for such outlay as he might have himself contracted as a prudent owner; while he is disallowed any losses arising from a merely speculative undertaking. It is of the essence of the shipping trade to be adventurous and speculative, and therefore any attempt by a mortgagee to work the ship, for the purpose of discharging his mortgage debt, must always be attended with considerable risk. The present case, however, also shows that the mortgagee may contract no less liability in a *sale* of a ship. The observations of the Vice-Chancellor in his judgment, prove the importance in the first place of selling with as little delay as possible, so as to guard against any liability in respect of deterioration, and in the next place of conducting the sale in a provident and judicious manner.

COMMON LAW.

LAW OF LIBEL—NEWSPAPER ARTICLES.

Paris v. *Levy*, 9 W. R., C. P., 74.

This is an important addition to the list of decisions elucidatory of the law of libel; and in particular of that part of such law which concerns articles in newspapers or other periodicals which, being in the nature of a comment on a written publication, happen to be damaging to the character of some person referred to in such comment, or to the book which he has written. The facts of the case itself are not such as can be conveniently put into an abbreviated form; but the dicta of Mr. Justice Byles, and Mr. Justice Keating, in discharging a rule which the plaintiff had obtained for setting aside the verdict for the defendant, and for a new trial, are well worthy of consideration.

The effect of Mr. Justice Byles's judgment was as follows. The law allows a privilege to a *fair* comment (either written or oral) on a literary production, and allows such to be published, although it may fall within the general definition of a libel or slander, as tending to bring another into ridicule and contempt. But in such a comment no attack *upon private character* can be allowed. And Mr. Justice Keating added to this that, in his opinion, it was *incumbent*, even, upon a newspaper to make fair comments upon any publication before them, so that they did not degenerate into imputations of a personal character.

CRIMINAL LAW.

AGGRAVATED ASSAULT—EVIDENCE OF MALICE, WHEN REQUIRED.

Reg. v. *Sparrow*, 9 W. R., C. C. R., 58.

The substantial point here raised for the opinion of the Court for the consideration of Crown Cases reserved, was one which has often before been judicially considered—viz., the circumstances under which the law will *imply* an intention. It is perfectly clear, for example, that a killing which shall be without "malice afore thought" does not amount to the crime of murder. But such malice may be either express or implied; and will be implied in many cases of homicide—as in the common instance given in the books of killing an officer of justice while resisting him in the lawful execution of his duty with a legal warrant, and knowing his authority, or the object with which he interposes. Here the law will imply malice—the necessary ingredient to make out the crime of murder; and thus, too, where one man assaults another, and strikes him with blows calculated to cause grievous bodily harm, and which blows, in point of fact, do cause such harm, the law will imply an "intention" to cause harm of that nature, so as to bring the crime within 14 & 15 Vict. c. 19, s. 4, or other statutable enactment against *malicious* infliction of grievous bodily harm. And this, though the evidence establishes, and the jury confirm by their finding, that there was no premeditation on the part of the offender.

It is, however, to be observed that there are other cases in which it is essential that there appear to have been, on the part of the person accused, a specific intention to commit the offence with which he is charged. Thus, if a statute makes the intention part of the offence—as, for example, the being armed by night with offensive weapons *with intent* to break into a building—evidence of such intent must be given; and it may be inferred from the nature of the weapons found on the prisoner, the place where he was, his declarations, and the like.

In the particular case now under consideration, the prisoner was indicted for having *maliciously* inflicted bodily harm, and the jury found that such harm was inflicted, but "without premeditation," and under the influence of passion. The Court held him to have been rightly convicted.

EVIDENCE MUST BE CONFINED TO THE POINTS IN ISSUE—COLLATERAL FACTS.

Reg. v. *Holt*, 9 W. R., C. C. R., 61.

There is no rule of evidence more fundamental or more important than that which confines it to the points in issue. It is true that under certain circumstances *collateral* facts may be admitted, but these must in all cases be such as afford reasonable presumption with regard to the principal matter in dispute (Tay. Ev., 2nd ed. p. 288). On this principle of the law of evidence, it was, in one case, held by all the judges that an admission by a prisoner that he had at another time committed an offence similar to that with which he was charged, and that he had a tendency to perpetrate such crimes, could not be received (*Reg.* v. *Cole*, 1 Ph. Ev., p. 477). In the present case, the prisoner was convicted of obtaining money by false pretences, part of the evidence tendered on behalf of the Crown being to the effect that the prisoner, on a previous occasion, had obtained from another person a sum of money on a false pretence, similar to that which he was now charged with having made use of—such previous obtaining not being in any way referred to in the indictment. It is difficult to understand how, in the face of the decision of *Reg.* v. *Cole*, or even on general principles, such evidence could have been admitted at the trial; but it is satisfactory to be able to add that the conviction was quashed by the court of appeal.

Correspondence.

MAYOR'S AND SHERIFFS' COURT PRACTICE.

Can you, or any readers of the *Solicitors' Journal*, inform me if any works on the procedure of the mayor's and sheriffs' courts of London have been published, and if so, which is the

latest and best authority on the subject? If no such works have been published, I shall be glad to know how the procedure of those courts respectively is regulated, how to ascertain their jurisdiction, and what Acts of Parliament relate to them.

An Articled Clerk.

[A book on the Practice of the Sheriffs' Court, by Mr. O. B. C. Harrison, has just been published; and Mr. J. Locke has written one on the Law and Practice of Foreign Attachment in the Lord Mayor's Court.—Ed.]

Ireland.

ATTORNEYS AND SOLICITORS OF IRELAND.

At the general meeting of the Incorporated Law Society held in the Solicitors Hall on the 27th November, R. J. T. Orpen, Esq., president, in the chair, the report of the council was made and confirmed. The first portion of the report deals with the new regulations for the education of this branch of the profession. The subjects of registration of judgments, fees in the Bankruptcy Court, delays in the registration of deeds office, and some minor topics, are referred to. The following paragraphs, being of general interest, are extracted from the report of the council, the concluding one having reference to two portraits of the late President and Vice-President of the Society, which have lately been placed in the Solicitors Hall.

Extracts from Report of the Council.

A Bill was introduced into Parliament containing a clause under which the solicitor to the Ecclesiastical Commissioners was to be paid a salary, and enacting that all costs received by him should be accounted for with the board, the result of which would be to enable the commissioners to receive their solicitor's costs.

Your council considered that any contract whereby the fees and profits properly chargeable by and payable to a solicitor by third parties and not by the client, should be paid to or for the benefit of any person whomsoever, save the solicitor himself, was highly objectionable, and that the operation of the clause referred to would be to cause all fees of whatsoever description formerly paid to the solicitor or attorney of the commissioners to be carried to the credit of their funds, and feeling that the principle involved in such clause was novel, and unless sanctioned by the authority of an Act of Parliament would be illegal, as being contrary to the spirit of the oath taken by every solicitor, prepared a petition to Parliament on the subject, and they have the satisfaction of stating that the clause was struck out of the Bill.

It having been stated to your council that one of the Masters of the Court of Chancery had declined to refer a bill of costs to a solicitor for taxation (or to be moderated), and had approved of its being taxed by a non-professional gentleman connected with one of the offices of his court, a deputation from your council waited on the Master in order to ascertain his feelings and opinion on the subject; and the Master was pleased to state that he would not adhere to the practice of referring costs to be moderated only by persons not solicitors, but would refer such costs either to a solicitor or to any other proper person whom the solicitor on both sides might agree on.

Your council have received the first annual report of the Cork Law Society, and trust that body will persevere and succeed in the object for which it has been established, which is of a kindred nature with this society, and calculated to advance the best interests of the profession in that locality; and your council trust that ere long similar societies will be established in each of the other three provinces. Such associations are in no respect calculated to clash with the interest of this the parent society, but rather tend to aid and strengthen its usefulness.

Your council perceive that a subject which had engaged the attention of this society has, by the exertion of the Cork Law Society, been fully accomplished, and deeds executed without stamps, or with insufficient stamps, can now be duly stamped on payment of the duties, without any penalty and without the production of an affidavit, provided they be presented at the chief office in Dublin for the purpose within 60 days from their date.

Your council, in the month of February last, presented a petition to Parliament, praying for the abolition of the solicitors' certificate duty, but they regret to say their effort has been unavailing.

Having adverted to the several transactions which have engaged attention during the past year, your council now, in conclusion, refer with very deep regret to the void which death has made amongst them and in the society, by the removal of two most valued and respected members—your late president and vice-president, Mr. William Goddard and Mr. Richard Meade—who were cut down within ten days of each other—the former in the fulness of years, the latter in the full vigour of manhood. They had, for many years, gone hand in hand together in the discharge of the duties of their high offices in your society, giving their best attention to every matter calculated to raise the social position of our profession, and to advance the best interests of your society. They have gone to their rest, respected and regarded by all, leaving for those who follow them bright examples of the course they should run who hope to win for themselves the like esteem of their fellow men.

In testimony of their respect, the profession at large entrusted to the management of your council a subscription to procure for your society portraits of their departed friends. The portraits have been painted by an eminent artist, and are now placed in the Solicitors' Hall, where we trust they will long be preserved as memorials of the sterling worth of those whose features they so faithfully represent.

It was then resolved that this meeting fully concurs in the sentiments of respect expressed in the report towards our late president and vice-president, Mr. Goddard and Mr. Meade, and we desire hereby to record the deep regret we feel for the loss the society has sustained by their deaths.

Queenstown.—A case recently came before the Petty Sessions Court at Queenstown, which will help to illustrate the fact that, while provision is made by the law for an inspection of the food and proper accommodation of a ship's crew—the magistrates having power to fine owners for a breach of the Act in that respect, in each case £20—yet they have no authority to order a survey or inspection of the ship's bottom, or her general seaworthiness, on the complaint of any unfortunate sailor who has signed articles to sail in her, but who may find her likely to be his coffin after a few days spent on board. The "White Jacket," a ship laden with salt, and bound for Calcutta, belonging to a large firm in Liverpool, put into the harbour about a fortnight since, under the following circumstances:—The captain, it seems, had objected that the vessel was overladen, but was offered the alternative to either proceed on the voyage or resign. He then consented to sail, but shortly after sailing he was compelled to put into Queenstown harbour. The owners being written to, sent over instructions that the vessel should be sent to sea again as she was. The captain and crew refused to proceed, and a new captain was sent on board, who swore that the ship was seaworthy and not overloaded, whereupon the men were arrested and lodged in gaol for mutiny. The magistrates, having no power to adjudicate on the seaworthiness of the ship, refused to punish the men or order them to proceed in what they considered a sinking ship. The vessel was afterwards brought back to Queenstown Harbour, having narrowly escaped being wrecked.

Foreign Tribunals and Jurisprudence.

France.—The atrocious murder of M. Poinsot, one of the Presidents of the Imperial Law Courts, which took place in the night of Wednesday, the 5th instant, in a first-class carriage on the Strasbourg Railway, while he was returning to Paris to attend his judicial duties on the following day, has created the greatest consternation and excitement amongst all classes in Paris, more especially among the judges and other members of the legal profession, by whom he appears to have been held in high esteem. We are indebted to *Galignani's Messenger* for the following particulars relative to M. Poinsot.

M. Poinsot commenced life as simple clerk to an avoué at Bar-sur-Aube. He afterwards became advocate, and pleaded before the Civil Tribunal of Troyes. Among his clients at that place were the family of M. Casimir Périer. M. Poinsot was 30 years in the magistracy. After having been Procureur du Roi at Troyes, he was appointed, in 1833, substitute at the Civil Tribunal of the Seine. He was afterwards named substitute of the Procureur-General of Paris, and, on the 14th of April, 1847, was nominated Advocate-General of the same court. He was dismissed on the 29th of February, 1848 (after the Revolution), but on the 2d of May of that year

was appointed a judge of the Court of Appeal of Paris. On the 6th of April, 1857, he was named President of one of the chambers of the Imperial Court. The funeral of the late M. Poinsot took place on Saturday at the church of St. Louis d'Antin, which was far too small to contain the number of people anxious to be present. The procession left the house of the deceased, in the Rue d'Isly, at 12 o'clock. The hearse and all the mourning coaches bore the cipher of the deceased. The chief mourners were MM. Audibert, Jules L'Hômme, Gustave Royer, the nephews and cousin of M. Poinsot. The pall was held by MM. Devienne, Chaix-d'Est-Ange, Perrot de Chézelle, sen., and Henriot, all in their official robes. A numerous deputation from the different courts of law and tribunals followed, also in their robes. M. Billault and M. Rouland, Minister of Public Instruction, were present; and the Minister of Justice was represented by his secretary-general, M. Lascoux. Among the other legal functionaries who attended were MM. Dupin, Desparlies de Lussan, Aylies, Poultier, Zangiacomi Debelleyme, Cordoen, and all the members of the Imperial Court to which the deceased belonged. Next came a deputation of advocates, preceded by the council of the order, headed by M. Jules Favre, the batonnier. Among the eminent members of the bar were MM. Berryer, Senart, Dufaure, Cremieux, Marie, Coin-Delisle, &c. The service was celebrated by the curé of St. Louis, M. Martin de Noirlieu, and at its conclusion the body was taken to the Strasbourg railway station, to be conveyed to the family vault at Chaource (Aube).

The National Association for the Promotion of Social Science.

EXPENSES IN BANKRUPTCY. BY GEORGE A. ESSON, ACCOUNTANT IN BANKRUPTCY IN SCOTLAND.*

The facts and observations which the writer has to submit are confined to the administration of bankruptcy in Scotland. It is not necessary, in this place, to enter upon any disquisition on the Scotch law relating to bankruptcy. It is proper, however, to explain, for the information of strangers, that the creditors in Scotland, on the award of sequestration (adjudication of bankruptcy), have the estates of their bankrupt debtors adjudged, or declared to belong to them, for the purposes of recovery and distribution. The creditors are, so to speak, constituted a corporation, for the special purposes of receiving and distributing the estates of bankrupts. They elect a trustee, who is their manager, or receiver, to whom their powers of recovery and distribution are delegated. They make choice also, from their own number, or from mandatories specially representing creditors, of three commissioners, who act as assessors, or a standing council to the trustee, to whom the trustee resorts for advice and direction in the course of his administration, on occasions on which it is necessary to appeal to the creditors themselves. The commissioners are the auditors of the trustee's accounts, and they fix his commission or remuneration, subject to the power of judicial appeal, on the part of the trustee.

It may be remarked that the necessity for the intervention of the courts, in the administration of bankruptcy, is occasional and not constant. Judicial sanction is required for certain acts of the creditors and of the trustee, in order to give them full binding effect. The award of sequestration, the confirmation of the elections of the trustee and commissioners, the examination of the bankrupt, his discharge, and the discharge of the trustee, are judicial acts, or require judicial sanction. These appeals, however, to the Court for administrative powers are readily and cheaply made; and they are competent in the sheriff (county) courts.

The expenses in bankruptcy may be classed under the following heads:—

1st. The Commission or Remuneration to the Trustee.

2nd. The Law Charges incurred to the Law Agents or Solicitors employed.

3rd. The Miscellaneous Expenses attending the Management of the Trustee; and

4th. The Expenses of the Judicial Administration of the Law of Bankruptcy, and the cost of the Supervision and Control of the Accountant in Bankruptcy, as the official Inspector of Trustees and Commissioners, and the Keeper of the Records.

In treating of the expenses in bankruptcy, the element of *time*, consumed in the process of winding up, is an important consideration.

The statistics of bankruptcy in Scotland, prior to the year 1856, are not readily available. In that year the Act* for the Amendment and Consolidation of the Law, which is now in operation, was passed. By that Act, the office of accountant in bankruptcy is constituted, and it is provided that the accountant shall keep the register of sequestrations, and make reports, annually, of the proceedings in bankruptcy, to the Court of Session. The period which has elapsed since the passing of that Act has not been sufficiently long to afford materials for extended observation connected with the statistics of bankruptcy. The writer has been able to gather, from the accountant's reports already issued, and from other sources of information at his disposal, some facts regarding the expenses, which may be useful and interesting to social economists and legal reformers. These facts may be arranged under the four heads into which, as before stated, the expenses in bankruptcy may be classed.

I.—The Commission or Remuneration to the Trustee.

In bankruptcies which are wound up by composition settlements, the remuneration to the trustee is a sum fixed by the commissioners, as compensation for his trouble and responsibility. It may be a commission, at a certain rate per cent., on the bankrupt's assets, but it is more commonly a sum allowed as compensation for the time and trouble of the trustee, without reference to the amount of the assets.

In one hundred and four estates, which were wound up by compositions in 1857, as reported, the average amount of the trustee's remuneration was £23 14*s.*, or about 2½ per cent., if measured by the gross value of assets.

In eighty cases of composition settlements, in 1858, this remuneration averaged £43 8*s.* 2*d.*, or about 2¾ per cent., if measured by the gross assets.

Taking a general view of the results of the experience of the two years above stated, it may be fairly concluded that the average amount of the trustee's remuneration in sequestrations, wound up by compositions is (in round numbers) £33, or about 2½ per cent., if measured by the gross value of the assets.

In sequestrations, which are wound up by the recovery and distribution of the assets, the trustee's remuneration is a commission or percentage on the sums received by him.

In 1858 (which is the first year under the new Act, in which an appreciable number of sequestrations were wound up in this way), the trustee's commission averaged 5⅞ per cent. of the gross receipts.

In 1859 (when a large number of sequestrations were wound up by division of the assets), the average commission was slightly under 5 per cent. of the gross recoveries.

In looking into the details of the cases which give these average results (as reported in appendix) it will be found that in sequestrations in which the receipts amount only to £100, or thereby, the commission is sometimes even so high as 15 per cent.; and, in those in which the receipts amount to £200, or thereby, the commission is often 10 per cent. of the receipts. The assets in these cases are generally composed of small trade debts, and the commission on them, although at a very high rate per cent., is small in actual amount, and cannot be considered as too great remuneration to the trustees in these cases, considering the very great trouble involved in the recovery of small debts from an inferior class of debtors.

It may be safely concluded, from the experience of the year 1859, above stated, that the average rate of commission to trustees, in sequestrations wound up by division of assets, does not exceed 5 per cent.

II.—The Law Charges.

It is usual and proper to measure the trustees' commission by contrasting it with the amount of the assets recovered; because the commission bears a fixed relation to the amount of the receipts. This, however, is not the case as regards the law charges, which have no direct relation to the amount of the assets. It is indeed difficult to suggest a rule by which the average amount of law expenses in sequestrations can be fairly ascertained, so various are the circumstances of each case, as respects the extent of litigation, the duration of the sequestrations, and otherwise. All that the writer can hope

* This valuable paper, and another by Sheriff Glassford Bell, on the Bankruptcy Law of England and Scotland, have been published in a separate form. Glasgow: Mackhose; London: Hamilton, Adams, & Co.

* Short title—"The Bankruptcy Scotland Act, 1856," 19 & 20 Vict. c. 79.

to do in these circumstances is to furnish data, for the purpose of approximating to a fair average.

It appears that in 1858, when the estates which were divided were small in amount, the law charges averaged upwards of 13 per cent. of the assets; and the average amount of these charges applicable to each sequestration so wound up was (in round numbers) £49. In 1859, when a number of larger estates were wound up by division, the law charges average rather less than 9 per cent. of the receipts; and the average amount for each sequestration so wound up was (in round numbers) £64.

The writer applied to the auditor of the Sheriff Court of Lanarkshire (the county in which there is the largest number of sequestrations) for a statement of the taxed amount of law charges applicable to sequestrations under the recent Act. By the favour of that gentleman he has received a statement of the amounts of these charges in one hundred and seven sequestrations, taxed in the years 1858 and 1859. The taxed amount of these expenses is £5,982 9*s.* 6*d.*, and the average for each of these sequestrations is, consequently, £56, or thereby. The expenses so returned apply partly to sequestrations settled by composition, and partly to those which have been wound up by division of the assets. The auditor, in his return states, that from the experience of the accounts passing through his hands, he is of opinion that "in the general case where the account is fairly charged, the expenses of the law agent for a sequestration under the bankrupt Act, which is wound up, and in which the bankrupt obtains a discharge under a composition arrangement, carried through without opposition under the statute, may, on an average, be estimated at from £35 to £40." The writer may add, that he fully concurs in this opinion.

In these circumstances, it may be submitted, as a fair and reasonable conclusion, so far as experience under the new Act warrants a conclusion—1st, That the average amount of the law charges, in an ordinary sequestration, wound up by composition, does not exceed £40; and 2nd, that in an ordinary sequestration, wound up by division, it does not exceed £65.

III.—The Miscellaneous Expenses.

These, as the name indicates, are of a very mixed character, and difficult to estimate. There are travelling charges, cost of valuations, expenses of advertising, postages, and incidents. These are *ordinary* charges incidental to sequestrations in general. They amount, so far as can be judged from past experience, to 3¼ per cent., or thereby, of the receipts, from estates wound up by division.

In sequestrations settled by composition, the average of these expenses does not exceed £27 for each sequestration.

The *extraordinary* charges, which appear in some sequestrations, such as wages, and outlay for working up materials, completing contracts, &c., are more properly deductions from the receipts, than expenses applicable to the sequestration.

IV.—The Expenses of the Judicial Administration of the Law of Bankruptcy, and the Cost of the Supervision and Control of the Accountant in Bankruptcy.

The judicial administration of bankruptcy is conducted by the court, supreme (Court of Session) and inferior (Sheriff or County), along with the other judicial business of the country. The expense of the Scotch judicial establishment is, as is well known, a branch of the public expenditure; and this expense is not appreciably enlarged, in consequence of bankruptcy being involved in the jurisdiction of the judges. The estates of bankrupts are not specially charged, in any way, with the costs of the judicial establishment of the country.

The office of Accountant in Bankruptcy was established by the Act of 1856. Some misapprehension, regarding the duties of this office, is likely to arise from his official designation. The name suggests the idea that this officer is charged with the control and disposal of money; but he receives none of the moneys of the bankrupt estates. It also conveys the impression that the audit of accounts in bankruptcy constitutes part of the duties of the office; but, as has been already stated, the commissioners are the auditors of the accounts. The duties of the accountant are properly those of an inspector, charged with the supervision and control of both trustees and commissioners to ascertain that they discharge their duties, and, in case o their failure, to report the offenders to the Court for removal or censure. The creditors have easy access to this officer to present complaints, in cases of delinquency on the part of trustees or commissioners.

The whole expense of this office, including the accountant's salary (£850), salaries to three clerks (£150 each), cost of chambers, &c., is defrayed out of sums voted by Parliament The amounts of the annual expenses of this office, for the four years of its existence, as taken from the Civil Service Estimates, are noted below.* The cost of the whole establishment may be stated to amount, in round numbers, to £1,500 a year. It may cost more to maintain this office on an efficient footing, as regards the services of clerks.

The expense of the accountant's office and establishment is the only charge connected with bankruptcy, which burdens the revenues of the country. The office is not in any way supported by fees—all parties interested are entitled to the services of the accountant and his clerks, in their official capacities, without charge. It is understood that this arrangement has worked well.

It has been already said that the *time* occupied in the process of winding-up is an important consideration in treating of the expenses in bankruptcy.

Sequestrations which are wound up by composition settlements, very rarely endure beyond a year. These settlements are generally concluded, and the sequestrations declared at an end, after the expiry of a few months from the award of sequestration. The number of sequestrations wound up in this summary way was, in 1857, ninety-seven; and, in 1858, one hundred and eighty-nine.

In sequestrations wound up by division of the funds, the average time occupied in the process of winding up (counting from the date of award of the sequestration to the discharge of the trustee), was, as regards the small number (twenty-three) of sequestrations so wound up, in 1858, rather less than one year (months 11·782): and, as regards the one hundred and twenty-three sequestrations so wound up in 1859, the average time was rather less than a year and a half (1·498 years).

To sum up what has been stated, regarding expenses in bankruptcy—

1st. The average expenses in an ordinary sequestration, wound up by composition settlement, may be stated thus:—

Trustee's remuneration	£33	0	0
Law charges.....	40	0	0
Miscellaneous expenses (ordinary)	27	0	0
Total	£100	0	0

2nd. It appears from the experience of the years 1858 and 1859, as regards the sequestrations which have been wound up by division of funds during these years, that 25 per cent., or thereby, of the gross receipts has been required to defray the expenses, *ordinary* and *extraordinary*, attending these sequestrations; the remaining 75 per cent. having been divided amongst the creditors;† and that this 75 per cent. has been distributed, and the sequestrations wound up, within an average period of a year and a half from the commencement of the sequestrations.‡ In considering these results, it must be kept

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* The amount of the estimate for the office for the first year to 31st March, 1858 (including salaries from 1st November, 1856, and extraordinary expenses connected with the establishment of the office), is..... £1,878 12 5
The estimate for the year ending 31st March, 1859 (including some extraordinary charges), amounts to..... 1,675 16 6
The estimate for the year ending 31st March, 1860, amounts to 1,531 12 0
The estimate for the current year ending 31st March, 1861, amounts to 1,527 12 0

	In 1858. Per cent. of gross receipts.	In 1859. Per cent. of gross receipts.
† Trustee's commission . . .	5½	5
Law charges . . .	13½	9
Miscellaneous ordinary charges	3½	3½
	23	17½
Miscellaneous extraordinary charges	½	7½
	23½	24½
Divided amongst creditors .	74½	75½
Surplus to bankrupt . .	2	—
	100	100

‡ It appears from the accountant's report for 1858, that the average value of the estates sequestrated in 1857 was £1,300, or thereby. The average value of estates wound up by division of the assets, in 1858, was only £365, or thereby; and in 1859, £823 or thereby. These figures prove that the estates wound up during these years, and especially during the first year, were generally small in amount. The effect which the estates of larger amount (when they come into computation) will have in the way of reducing the average of the expenses is clearly shown by contrasting the results for the years 1858 and 1859. In the former of these years, when the whole of the estates then divided were small in amount, the average *ordinary* expenses amounted to 23 per cent. of the gross

in view that the great majority of the estates which have hitherto been wound up, are comparatively of small amount, and that sufficient time has not elapsed, since the passing of the Act, to bring in the larger estates to operate upon the average.

3rd. So far as past experience warrants a conclusion, the *ordinary* expenses attending a sequestration wound up by division of the funds are, on an average:—Trustee's commission, 5 per cent. of the gross assets or receipts; Law charges, £65; and Miscellaneous *ordinary* charges, 3½ per cent. of the gross receipts. Applying these figures to an estate of the average value of £1,300 (which is the average amount of estates sequestrated in 1857), the following are the results:—

	Amount.	Rate per cent. of gross assets.
Trustee's commission...	£65 0 0	5
Law charges.....	65 0 0	5
	£130 0 0	10
Miscellaneous ordinary charges	45 10 0	3½
	£175 10 0	13½

4th. The only charge connected with bankruptcy in Scotland, which burdens the revenues of the country, is the cost of the office of Accountant in Bankruptcy, which at present amounts (in round numbers) to £1,500 a year.

The writer in concluding this paper, may be permitted to submit some general observations, bearing upon the administration of bankruptcy.

1st. It is wisely provided by the law of this country that the creditors are invested in the estates of their bankrupt debtors, for the purposes of administration and distribution. The courts, the accountant, the trustee, and the commissioners, are, so to speak, aids to the creditors in the discharge of their functions. It is submitted that no system can be more simple in principle; and it appears from the results which the writer has deduced that this principle is carried out in practice at moderate expense to the creditors themselves, and with great economy as regards the public.

2nd. The power which is given to the creditors of electing a trustee (professional or non-professional, as seems to them best suited to promote their interests is valuable, as tending to economy and good management. The trustee elected by the creditors finds security (judicially) for his faithful accounting, and he is subject to judicial control. The creditors may remove him of their own accord, or they may have him removed by judicial authority, on cause shown.

3rd. The commissioners form a standing council to the trustee, which is readily constituted at small expense. The system of audit of the trustee's accounts by the commissioners is judicious. The creditors, as it were, devolve, on a small committee of their number, the duty of settling these accounts, subject, in case of question, to judicial supervision.

4th. It is a good and prudent arrangement by which the trustee is constituted the responsible employer of the law agent or solicitor, to transact the law business of the creditors connected with the sequestration. Divided responsibility in the selection of a law agent is thus avoided; and, if the trustee make an improper selection, the creditors themselves can correct the error by removing the trustee. The law agent's accounts are cheaply and expeditiously taxed, either by the auditor of the Court of Session, or by the auditor of the Sheriff (County) Court, to whichever of these auditors the creditors are pleased to refer the taxation. The expense of a separate taxing master in bankruptcy is thus avoided.

5th. The judicial administration of bankruptcy is conducted efficiently by the general courts of the country. There is thus no occasion for the expense of a peculiar jurisdiction in bankruptcy cases. Questions which originate before the trustee are readily and cheaply brought, either into the Sheriff (County) Courts, or into the Court of Session; and these questions (if appeals be competent) may be ultimately decided by the House of Lords as the court of last resort.

6th. The writer has great delicacy, in consequence of his position, in referring to the working of the newly-constituted office of accountant in bankruptcy. It seems useful that there should be a public inspector of trustees and commissioners, to provide that they perform their duties faithfully, and to receive and investigate the complaints of creditors in reference to the administration of the estates. It also seems a good arrangement that the accountant's office is used for the purpose of concentrating the records of bankruptcy, and thereby giving to the creditors and to the public convenient access to them, and to the statistics obtained from them. The ready access to this office which is afforded to the creditors in matters connected with the administration and management of bankrupt estates, has a tendency to check litigation in trifling cases.

7th. The great desideratum for perfecting the administration of bankruptcy is a watchful superintendence on the part of the creditors, who are the real owners of the bankrupt estates. Where the creditors superintend the proceedings watchfully, the estates are wound up speedily and economically; where they neglect their control, the proceedings become sluggish, imperfect, and expensive. No system of checks which can be established will compensate for the want of proper superintendence on the part of the creditors.

8th. It follows from what has been stated, that it is of great consequence to the beneficial working of the system, that the creditors should make a proper and judicious selection of commissioners. It not unfrequently occurs that commissioners are selected who, using the forcible language of the law of Scotland, are conjunct and confident with the trustee. They are subject to his influence, in business or otherwise, and thus not impartial administrators of the great trust which is reposed in them by the creditors. It would be an improvement if certain parties connected with the trustees—such as his partners, clerks, and servants — were declared incapable of acting as commissioners. The law agent in the sequestration should also be declared disqualified from acting as a commissioner. The creditors have the power of removing objectionable commissioners; but this power is rarely used, and it appears that it would promote purity and efficiency of management, if such interested parties were declared ineligible for the office of commissioners. The trouble of the commissioners is not remunerated at the expense of the estates. There is a general impression that unpaid services in matters of business are not so highly profitable as those which are suitably remunerated. It might be an improvement, if the commissioners were remunerated for their services at the expense of the estates. The amount of their remuneration might be fixed by the creditors themselves; or, in the option of the creditors, it might be referred to the auditor of the law business accounts, or to the accountant, with the power of appeal, as in the case of the trustee's commission.

9th. There is some risk of the expenses in bankruptcy being unduly increased, by trustees devolving on the law agents the performance of duties for which they (the trustees) are responsible, and for which they are paid. The process of winding up—which is conducted, not by the trustee himself, but under directions given by him to his law agent—is not only unnecessarily expensive, but also tedious and unsatisfactory. The trustee ought to be qualified to perform all the ordinary duties attending the administration and distribution of the estate, without reference to the law agent. The attention of the law agent, on the other hand, ought to be confined strictly to the law business, and to the conveyancing. Confusion in the discharge of the relative duties of the trustee and the law agent, where such prevails, ought to be corrected by the auditor who taxes the business accounts by disallowing charges in the law agent's account, for business which falls properly within the province of the trustee.

10th. Great benefit is likely to accrue from the publicity which has been given to the proceedings in bankruptcy since the Act of 1856 came into operation. Any abuses which arise in the administration of bankruptcy may now be reasonably expected to yield to the influence of enlightened public opinion. The publication of the statistics of bankruptcy is likely to have a beneficial effect on the parties who are professionally engaged in the administration of estates in bankruptcy, as well as upon the public mind. The consideration of these statistics may be expected to promote good, cheap, and expeditious management on the part of the trustees; and the public will obtain from them authentic *data* from which to judge of the economical advantages of the system of bankruptcy law which is in operation in this country.

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receipts. In 1859, when the estates divided were larger in amount, the average of the ordinary expenses came down to 17½ per cent. on the gross receipts. The writer is, therefore, fully warranted in expecting that the average expenses will be still further reduced, when the larger estates, which are now in the process of winding up, come to operate upon the average.

Metropolitan and Provincial Law Association.

SUGGESTIONS FOR THE IMPROVED ORGANIZATION OF THE PROFESSION.

The following paper was read by Mr. Daniel James Miller, at the late meeting at Newcastle:—

It is hardly necessary to apologise for introducing to this society considerations for further improving the tone, character, and social position of the profession.

Both this association and the Incorporated Law Society have in common this object, and much has been done to unite and organize the influence of attorneys, to promote professional improvement, and to facilitate the acquisition of legal knowledge. But no opportunity should be lost of agitating for further progress, ventilating suggestions, and seeking the best means of giving them practical application. The following suggestions are offered not without diffidence but with the anxious hope that even though they may not meet with approbation, they may at least be deemed worthy of consideration and discussion.

The present meeting, bringing together both the provincial and metropolitan members of the association, and in addition inviting the presence and support of the profession at large and their articled clerks, is a great stride towards an extended organization including the whole profession in its basis.

To the Incorporated Law Society is due a large meed of praise; for this society was the pioneer in the attempt to bring together the public-spirited members of our body, and to give their efforts a coherence and solidity. That society also formed a nucleus round which this and other societies have gathered. With it the general body is identified, and by its exertions many and valuable benefits have been obtained. But the progress we have made leads us to look forward with confidence. We cannot conceal from ourselves that the Incorporated Society only enumerates amongst its members a portion of the profession, and that of these the larger number are taken from the metropolis. It is to be regretted that the organization of the society is so imperfect, and it is worthy of consideration whether the Incorporated Law Society could not be made to comprise every member of the profession, and whether the many societies into which the profession is divided, could not coalesce or combine as branches of the grand trunk or body. The advantages of such a combination would be great, nor would it be entirely without example; I may instance the bar, which is composed of the members of the various Inns of Court, and these societies have combined for the purpose of carrying out wise and enlightened educational reforms. The bar, it should be recollected, has always been a compact and self-governing body, and this to a great extent has given rise to the honour, and the public spirit, which as a general rule, actuate its members and command for that body the general respect.

Already the Incorporated Law Society are entrusted with the superintendence of the examination of articled clerks, and the admission as an attorney might *ipso facto* include admission to the Incorporated Law Society, which then would indeed be the Society of Solicitors.

In the country the society might be formed into branches composed of members residing within the district, and the branch societies should select their own officer, of whom the chairman should *ex officio* be a member of the general council or governing body. The society and its branches might exercise supervision over the members, inquire into cases of malpractice, and hold periodical examinations of articled clerks.

By means of the branch societies libraries might be collected in central positions and facilities afforded for the formation of debating societies, the delivery of lectures, and other modes of assisting the law students in the acquisition of legal knowledge and the improvement of their mental culture.

The present system of examination is open to the objection that it permits the student to be idle during the first part of his articles, which he seeks to repair by a spasmodic effort of study towards its close, giving a superficial knowledge hastily acquired, and nearly as soon lost, and at the same time creating a disgust for study hardly ever overcome afterwards.

The changes in society render more solid attainments necessary in the professional practitioner than formerly, a wider scope is required to be given to the reading, and habits of study should be inculcated. This would be best effected by a periodical examination which would spread the reading over a longer duration of time, and cause the acquisition of knowledge to be continual and gradual, and therefore more sound and lasting. By the recently passed Act encouragement is given to educational and classical attainments by offering as a premium a shorter period of service to those who pass certain preliminary examinations of a high standard.

The periodical examinations which should be held both in the metropolis and by the country branches, would have a further beneficial effect by bringing together more frequently the students in the districts and the leading members of the profession, and encouraging in all a public spirit and generous emulation.

For the enquiry into cases of malpractice and the expurgation of offenders a committee of the council of the governing body both in the principal and branch societies might be created, assisted by a secretary or competent officer. By this officer complaints in the first instance might be investigated upon written statements, and on sufficient grounds appearing to the satisfaction of the committee the party complained of might be summoned to shew cause why he should not be suspended. The tribunal for this inquiry might be selected from the governing body of the central society by lot, and the sentence of suspension should have the effect of excluding the offender from the practice and the privileges of the profession, subject, however, to the review of the superior courts.

The meanest instruments may by a concurrence of circumstances bring a whole body into disgrace, and it seems only a fair and wise provision that a profession which by position is entrusted with interests requiring the highest integrity, should be the custodian of its own honour.

Such a privilege is already enjoyed by the bar, the church, and the military and naval services, and seems best calculated to create and preserve the honour it is its object to protect.

For the discussion and suggestion of amendments in the law and alterations in its procedure, the improved organization of the society and its division into branches and sections, with aggregate meetings from time to time at the principal towns and cities, will afford facilities and advantages unable by other means to be attained—the practical knowledge of the profession will be applied in the mode best calculated for the public welfare—its public spirit will be constantly evoked and a confidence will be engendered in the public mind in the energy, ability, and usefulness of the profession, which will tend more than any thing else to raise up and improve its tone, character, and social position.

Reviews.

A Compendium of the Law of Merchant Shipping; with an Appendix containing all the Statutes and forms of practical utility. By Frederick Philip Maude and Charles Edward Pollock, Esqs., of the Inner Temple, Barristers-at-Law. Second edition. London: H. Sweet. 1860.

We recently had occasion to notice the publication of a very admirable treatise on the Law of Merchant Shipping, and have now the pleasure of announcing another work not less interesting and able upon the same subject. The latter, although a second edition, is to all intents and purposes, a new treatise; inasmuch as the former edition was published prior to the Merchant Shipping Act, 1854, and several other important statutes relating to the same subject. The authors commence with a chapter on The Title to and National Character of Merchant Ships, and then proceed to discuss the liability of owners and part owners. The Master, the Crew, the Pilot, the Contract of Affreightment, Insurance, Hypothecation, Collision, Salvage, and Passengers, constitute the remaining general heads. It will thus be seen that the plan of the work is extremely natural and judicious, and we have no hesitation in saying that its execution throughout is all that could be desired. The effect of the authorities is stated generally with scrupulous precision, and at the same time with accuracy; while the authors have exhibited great diligence in collecting the reported cases, both ancient and modern. We have looked for omissions of this kind where they are most likely to occur, and have been unable to find any. The only fault that we can suggest is one which this book has in common with the majority of law books of modern times—nearly one-third of it is composed of Acts of Parliament. There is, however, as much of the same matter in Mr. Maclachlan's "Law of Merchant Shipping;" and if any other book happens to be forthcoming upon this subject, we shall no doubt have over again the Act of 1854, and other Acts relating to shipping, *in extenso*. Thus, a library which happens to have any two of these volumes, and to take in the general public statutes as well, will possess three copies of

all these voluminous Acts; and as changes take place in our statutes, especially in the event of any general consolidation, these text-books are doomed to be bound up with so much dead matter, which would be well enough amongst the general body of statutes, but are a mere incumbrance to a treatise. We make these observations, not because they have any peculiar application to the work now before us, but on account of the general prevalence amongst legal authors now-a-days, of the objectionable practice to which we have referred.

As to the proper text of the Compendium of Messrs. Maude & Pollock, we can speak only in terms of high commendation both of the industry and the learning of the authors.

The following extract is a fair specimen of the authors' style. We omit the notes which, however, contain a considerable body of law of a character supplementary to that discussed in the text. The passage relates to the important question as to the vesting of the property in ships while building:—

"Questions of considerable nicety often arise as to the time when the property in vessels which are building vests in the person for whom they are being built. The determination of this point must depend upon the intention of the parties, as evidenced by the particular terms of the contract under which the vessel is built. In the ordinary case of a contract to build a ship, the subject matter of the contract not being in existence, the vendee acquires no property in it until it is finished, and actually or constructively delivered. But where, by the terms of the contract, a superintendent is employed by the vendee to overlook the building, and the price is to be paid by instalments, which are regulated by particular stages in the progress of the work, so that the vendee may be said to appropriate the different portions of the ship as they are from time to time completed, the property in those portions vests in the purchaser as soon as each instalment is paid. The mere fact of the ship being one-third built at the time of the making of the contract has been held not to have this effect. In all these cases the question is one of fact rather than of law; namely, what was the intention of the parties as evidenced by their contract and the surrounding circumstances. In two recent decisions a distinction was drawn, based upon the facts of the cases and nature of the contracts, between the ship herself and materials which, although selected and prepared, had never been actually attached to her; it was held that the latter did not vest in the vendee, although the former did."

The Practice of the Sheriffs' Court of the City of London, with Forms of the Proceedings to be used by Suitors, and an Appendix of the Statutes, and Rules, and Orders of the Court. By O. B. C. Harrison, M.A., Barrister-at-Law, of the Inner Temple. Sweet, 1860.

It is now many years since any book especially dedicated to the elucidation of the jurisdiction and practice of the Sheriffs' Court of the City of London has been published. We believe that Mr. Lewis's Practice, which appeared in 1833, is the most recent upon the subject; and, as both the jurisdiction and procedure of the court have undergone great changes during the interval that has since elapsed, the want of a guide has been the occasion of much inconvenience to the profession and the public. It is for the purpose of supplying this want that the present work has been prepared. Its introduction, which contains a summary of the origin and history of the court, informs us that it is a court of record by virtue of its ancient common law jurisdiction, which formerly extended to all personal actions without limitation as to amount; and that although its principal jurisdiction in the present day is confined by statute to personal actions for amounts not exceeding £50, it still possesses, as an ancient court of record, attributes not attached to the ordinary county courts; as, for instance, the power to try actions under writs of trial. The court sits as a common law court for the trial of actions under these writs, and the proceedings at the trial in such cases are in conformity with the ordinary proceedings at Nisi Prius, and being altogether independent of the prescribed proceedings of the Statutory court. But the principal jurisdiction of the court is that which it derives from the London (City) Small Debts Act, passed in 1852; which, though differing in many important particulars from the county courts Acts in force when it was passed, is framed upon the model of those Acts; and within the last twelvemonth, rules of practice resembling, but not identical with, those relating to the county courts, have been framed for the regulation of the proceedings under this Act. It is competent to the court held under the statute to try personal actions, with a few exceptions, for any amount, if the parties agree; and without agreement, to the extent of £50. If a part only of a cause of action arises within the City, a summons may issue; and actions for malicious prosecution and false imprisonment, which are excepted from the jurisdiction of the county courts, may be tried in the Sheriffs' Court. The court also possesses jurisdiction under the Friendly Societies Acts, and Metropolitan Building Act of 1855.

The proceedings are by plaint and summons as in the county courts without pleadings; but we observe that the 72nd rule (at page 72 of the work), though not expressly naming the proceeding to which it relates as a pleading, seems calculated to introduce a system of proceeding into the Court which must be more or less attended with the inconveniences which the virtual prohibition in the statute against pleas was intended to prevent.

Mr. O. B. C. Harrison's work is divided into three parts. The first comprises the proceedings in actions under writs of trial. The second treats of the ordinary jurisdiction under the statute, and explains the proceedings of the Court from the entry of the plaint down to execution; and in the case of new trials, appeals and arbitrations. The third explains the jurisdiction and practice under the Friendly Societies Acts, and some other statutes by which the Court has acquired an addition to its ordinary functions. It may be added that whatever matter is introduced in the second part by way of illustration only is confined to the notes; and that the text is devoted exclusively to the statute and rules of practice.

Before the appearance of this book works on county court practice were generally resorted to as guides to the Sheriff's Court; but it is obvious, from what has been premised above, that such guides were neither convenient nor to be relied on for directing the proceedings in a court regulated by a distinct Act of Parliament, and differing in many respects from the county courts in point of both jurisdiction and practice. Mr. Harrison has long been known to our readers as one of the gentlemen who report for the *Weekly Reporter*, in the common law courts; and for some time past he has had no little practice in the Sheriff's Court. He is therefore peculiarly qualified to write such a treatise; and we can recommend it as being the careful production of a competent man.

The Social Science Almanack and Handbook for the year 1861. London: Tweedie.

This almanack will be found useful to the legal profession, and the public generally. It contains no little information upon some important subjects which were discussed by the Association for the Promotion of Social Science during the past year.

Law Students' Journal.

LAW LECTURES AT THE INCORPORATED LAW SOCIETY.

Mr. George Wirgman Hemming, on Equity, Monday, Dec. 17.

Mr. Frederick Meadows White, on Common Law and Mercantile Law, Friday, Dec. 21.

The lectures will be resumed on Monday, the 7th of January next, and be continued to the end of the several courses in March.

EXAMINATION FOR THE BAR.

Hilary Term, 1861.

The Council of Legal Education have approved of the following rules for the public examination of students for the bar:—

An examination will be held in next Hilary Term, to which a student of any of the inns of court, who is desirous of becoming a candidate for a studentship or honours, or of obtaining a certificate of fitness for being called to the bar, will be admissible. Each student proposing to submit himself for examination will be required to enter his name at the treasurer's office of the inn of court to which he belongs, on or before Tuesday, the 1st day of January next, and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable distinction; or whether he is merely desirous of obtaining a certificate preliminary to a call to the bar. The examination will commence on Tuesday, the 8th of

January next, and will be continued on the Wednesday and Thursday following. It will take place in the Bencher's Reading Room of Lincoln's Inn; and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order:—

Tuesday Morning, the 8th January, at half-past nine, on constitutional law and legal history; in the afternoon, at half-past one, on equity.

Wednesday morning, the 9th January, at half-past nine, on common law; in the afternoon, at half-past one, on the law of real property, &c.

Thursday morning, the 10th January, at half-past nine, on jurisprudence and the civil law; in the afternoon, at half-past one, a paper will be given to the students including questions bearing upon all the foregoing subjects of examination.

The oral examination will be conducted in the same order, during the same hours, and on the same subjects, as those already marked out for the examination by printed questions, except that on Thursday afternoon there will be no oral examination.

The oral examination of each student will be conducted apart from the other students; and the character of that examination will vary according as the student is a candidate for honours or a studentship, or desires simply to obtain a certificate.

The oral examination and printed questions will be founded on the books below mentioned; regard being had, however, to the particular object with a view to which the student presents himself for examination.

In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the bar, the examiners will principally have regard to the general knowledge of law and jurisprudence which he has displayed.

A student may present himself at any number of examinations, until he shall have obtained a certificate.

Any student who shall obtain a certificate may present himself a second time for examination as a candidate for the studentship, but only at one of the three examinations immediately succeeding that at which he shall have obtained such certificate; provided, that if any student so presenting himself shall not succeed in obtaining the studentship, his name shall not appear in the list.

Students who have kept more than eleven terms shall not be admitted to an examination for the studentship.

ENDORSEMENT OF CHECKS BY PROCURATION.

A communication which appeared in the columns of the "*Times*" a short time since, explains the legal position of the endorsed check question.

The writer after stating that the responsibility of bankers in the payment of checks endorsed "per procuration," was a matter of much importance to the mercantile community, and requesting to be allowed to state the actual position of a question with the history of which he happened to be personally conversant, proceeded as follows:—

"When in 1853, it was proposed to impose a stamp of 1d. on checks payable to order, of whatever amount, it became obvious to the Governors of the Bank of England, and to the eminent private bankers with whom they conferred, that the extensive use of such checks, and the absolute impossibility of bankers ascertaining the genuineness of the endorsements inscribed on them, precluded their adoption as a banking expedient unless bankers were protected from all obligation to consider the authenticity of the endorsements. To carry out this protection the 19th section was inserted in the Act 16th & 17th of Victoria, cap. 59.

"In the case of *Cookson* v. *the Bank of England*, a check drawn upon the Bank of England by Freeman and Co., payable to the order of Cuthbert Cookson and Co., was presented with the endorsement, 'Per procuration, Cookson and Co., A. Holme, agent,' and was paid by the cashiers of the bank.

"Holme, it was affirmed by Cooksons, had no authority to sign for them, and had absconded, having applied the moneys to his own use, and they thereupon demanded from the bank payment for the second time of the amount of the check, 655*l.* 12*s.* 10*d.*

"The bank refused to pay a second time; and the suit came on for trial before Mr. Baron Martin and a special jury, at Guildhall, on the 29th of June.

"At the opening of the trial Mr. Bovill, for the bank, having stated the chief features of the case, called the attention of the learned judge to the 19th section of the Act 16th & 17th of Victoria, cap. 59, which runs thus:—

"'Provided always, that any draught or order drawn upon a banker for a sum of money payable to order on demand which shall, when presented for payment, purport to be endorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draught or order to the bearer thereof; and it shall not be incumbent on such banker to prove that such endorsement or any subsequent endorsement was made by or under the direction or authority of the person to whom the said draught or order was or is made payable, either by the drawer or any endorser thereof.'

"And Mr. Bovill then submitted to his lordship that the intention of the clause was to protect the banker against liability arising from endorsements of any kind on checks to order; that the invariable practice of bankers since the passing of the Act had placed that construction upon its meaning; and that the plaintiff should be nonsuited.

"Mr. Manisty (for Cookson and Co.) contended that the 19th clause was only intended to protect the banker when checks were presented bearing the name of the payee, and that it was not intended to relieve the banker from asking to see the authority under which a check was endorsed '*per procuration*,' the very terms of such an endorsement declaring that it purports to be endorsed, not by the payee, but by a person who says, 'I sign by authority of the payee.'

"Mr. Baron Martin remarked:—'I should think the Legislature must be understood to enact according to the known ordinary practice, and every person knows it is a common thing to take a bill of exchange endorsed 'per procuration.' Nothing is more common. Any person who is in the habit of seeing them must see thousands, and the Legislature must be taken to enact according to the common course of business.

"'I am of opinion that the 19th section of the 16th & 17th of Victoria, cap. 59, protects the defendants,'

"The jury were then called, charged by the learned judge, and the plaintiff was nonsuited, Mr. Manisty asking leave to have an appeal, which was granted as a matter of course.

"The appeal, which should have come on for decision in November, has not been prosecuted, and the unhesitating decision of Baron Martin remains unimpeached, to confirm the interpretation which had been placed upon the 19th section of the Stamp Act of 1853, by the concurrent opinions of the Bank authorities and of the private London bankers, and I may add with certainty, having been personally concerned in its preparation, that this interpretation, now judicially affixed to the protecting section of the Act, only effects what was intended by its promoters. This satisfactory decision is after all a source of congratulation rather to the public than to the bankers as a class. A decision adverse to the Bank would have involved a general refusal by bankers to pay any check to order endorsed by procuration—they would have been uninjured, but the public would have lost a portion of the banking facilities which the Act contemplated.

"J. G. HUBBARD."

Births, Marriage, and Deaths.

BIRTHS.

CHASE—On Dec. 8, the wife of M. C. Chase, Esq., of the Madras Civil Service, and of the Middle Temple, of a daughter.

HOPWOOD—On Dec. 2, the wife of James T. Hopwood, Esq., of Lincoln's-inn, Barrister-at-Law, of a son.

LATHAM—On Dec. 6, the wife of Robert Marsden Latham, Esq., Barrister-at-Law, of a son.

MARRIAGE.

RAWLINS—GEDYE—On Dec. 13, Arthur, son of Robert Rawlins, Esq., of Whitchurch, J.P. for the county of Hants, to Emily Lowes, daughter of Nicholas Gedye, Esq., Solicitor, of Wimbledon-park, Surrey.

DEATHS.

GRANGER—On Dec. 7, aged 14 months, George Frederick, son of Mr. Charles Granger, Solicitor, of Leeds.

GRIFFITS—On Dec. 5, Henry Griffits, Esq., of Wendover, Bucks, Solicitor.

JENNINGS—On Dec. 12, Margaret, wife of William Jennings, Esq., of 34, Lime-street, aged 38.

McCHRISTIE—On Dec. 7, aged 64, T. Y. McChristie, Esq., for fourteen years Revising Barrister for the city of London.

SPINK—On Dec. 4, aged 23, William Rimmington, son of the late George Spink, Esq., Solicitor, Howden.

STOCKING—On Dec. 11, Thomas Stocking, Esq., Barrister-at-Law, aged 69.

Unclaimed Stock in the Bank of England.

The Amount of Stock heretofore standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months:—

CREE, JOHN, Coachmaker, Nottingham-court, Castle-street, Long-acre, £100 New Three per Cents.—Claimed by MARY ANN CREE, Spinster, the administratrix, with will annexed, de bonis non.

MATTHEWS, CHRISTOPHER WILLIAM, Pilot, Steel-yard-street, Greenwich, and ANN ELIZABETH MATTHEWS, his wife, £49 New Three per Cents.—Claimed by CHRISTOPHER WILLIAM MATTHEWS and ANN ELIZABETH MATTHEWS.

MOSS, GEORGE, Gent., Robertsbridge, Sussex, £145 10s. New Three per Cents.—Claimed by ABRAHAM KENNETT, of Hastings, and GEORGE MOSS, of Milwaukie, Wisconsin, North America, the surviving executors of the said George Mann.

TATUM, JOHN, Gent., Retreat Cottage, Park-street, Camberwell, £125 Consols.—Claimed by SARAH STYLES, Widow, and REBECCA TATUM, Spinster, the administratrixes, with the will annexed, of the said John Tatum.

TAUNTON, CHARLES DANIEL, Gent., Oxford, 13 Dividends on various amounts of £3 5s. per Cents. and New Three per Cents.—Claimed by CHARLES DANIEL TAUNTON.

English Funds and Railway Stock

(Last Official Quotation during the week ending Friday evening.)

	ENGLISH FUNDS.			RAILWAYS—*Continued.*	
			Shrs.		
	Bank Stock	..	Stock	Ditto A. Stock	107
	3 per Cent. Red. Ann..	92¼	Stock	Ditto B. Stock	134
	3 per Cent. Cons. Ann.	..	Stock	Great Western	73½
	New 3 per Cent. Ann..	92½	Stock	Lancash. & Yorkshire	120½
	New 2½ per Cent. Ann.	..	Stock	London and Blackwall.	64
	Consols for account ..	92⅝	Stock	Lon. Brighton & S. Coast	116½
	India Debentures, 1858.	96½	25	Lon. Chatham & Dover	53
	Ditto 1859.	96	Stock	London and N.-Wstrn.	102½
	India Stock	..	Stock	London & S.-Westrn.	95¾
	India 5 per Cent. 1859..	..	Stock	Man. Sheff. & Lincoln..	49½
	India Bonds (£1000) ..	dis.	Stock	Midland	135½
	Do. (under £1000).....	9 dis.	Stock	Ditto Birm. & Derby	109
	Exch. Bills (£1000)...	5	Stock	Norfolk.....	84½
	Ditto (£500)....	5 dis.	Stock	North British	65½
	Ditto (Small) ..	5 dis.	Stock	North-Eastn. (Brwck.)	104½
			Stock	Ditto Leeds	63½
			Stock	Ditto York	94
	RAILWAY STOCK.		Stock	North London.....	103
Shrs.			Stock	Oxford, Worcester, & Wolverhampton ..	..
Stock	Birk. Lan. & Ch. June.	83			
Stock	Bristol and Exeter....	99	Stock	Shropshire Union	51
Stock	Cornwall	6½	Stock	South Devon	44
Stock	East Anglian	17	Stock	South-Eastern	85½
Stock	Eastern Counties	52⅝	Stock	South Wales	64
Stock	Eastern Union A. Stock	38	Stock	S. Yorkshire & R. Dun	79
Stock	Ditto B. Stock	20	25	Stockton & Darlington	42½
Stock	Great Northern	110½	Stock	Vale of Neath	69

London Gazettes.

Professional Partnerships Dissolved.

FRIDAY, Dec. 14, 1860.

FISKE, ROBERT, & EDWARD BROWN FISKE, Attorneys & Solicitors, Beccles, Suffolk (Fiske & Son), by mutual consent. Nov. 15.

LEWIS, WILLIAM, THOMAS STOCKWOOD, & THOMAS TAMPLIN LEWIS, Attorneys & Solicitors, Bridgend, Glamorganshire (Lewis & Stockwood), by mutual consent. Dec. 8.

Windings-up of Joint Stock Companies.

TUESDAY, Dec. 11, 1860.

LIMITED IN BANKRUPTCY.

GREAT WESTERN IRON COMPANY (LIMITED).—Commissioner Hill will sit on Jan. 4, at 11, Bristol, to make a First Dividend of the estate and effects of the said Company, at the same time creditors to prove their debts.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, Dec. 11, 1860.

ALLDRAD, WILLIAM ALLEN, Attorney's Clerk, Chard, Somersetshire. Tucker, Son, & Forward, Solicitors, Chard. Jan. 31.

ALLPORT, JAMES, Silver Plater, Birmingham, and Hall Green, Worcestershire. Collis & Ure, Solicitors, 38, Bennett's-hill, Birmingham. Jan. 24.

ARNOTT, JAMES, Gent., Gateshead, Durham, and also of Newcastle-upon-Tyne. Chater, Arnott, & Chater, Solicitors, Newcastle-upon-Tyne. March 1.

BOWLEY, HENRY, Carpenter, West Grinstead, Sussex. Rawlison, Solicitor, Horsham. Jan. 26.

BRETT, GEORGE, Farmer, Toftrees, Norfolk. Kent, Watson & Watson, Solicitors, Fakenham, Norfolk. Feb. 1.

BUGGINS, Mr. JOHN, Farmer, Sutton Coldfield, Warwickshire. Slaney, Solicitor, 1, Newhall-street, Birmingham. Jan. 19.

CLAYPON, JOSEPH, Esq., formerly of Boston, Lincolnshire, afterwards of 9, Westbourne-street, Hyde-park-gardens, Middlesex, but late of Rose Hill, Totteridge, Hertfordshire. Burnham & Son, Solicitors, Wellingborough, Northamptonshire. Jan. 30.

COUSANS, CHARLES, Attorney's Clerk, Lincoln. Moore, Solicitor, Lincoln. April 25.

DRAKE, CHARLOTTE, Spinster, formerly of 17, Tavistock-place, Tavistock-square, but late of 9, Gower-place, Euston-road, Middlesex. Hird & Son, Solicitors, Portland Chambers, Great Titchfield-street, Middlesex. Jan. 1.

GALE, WILLIAM, Agriculturist, Grickstone Farm, Horton, Gloucestershire. Bush & Ray, Solicitors, 9, Bridge-street, Bristol. March 15.

HUMPHREYS, WILLIAM, Gent., 9, George-street, Edgbaston, Warwickshire, and formerly of Lionel-street, Birmingham, Blacksmith. Slaney, Solicitor, 2, Newhall-street, Birmingham. Jan. 12.

HUTCHINSON, THOMAS, Gent., Brotton, Yorkshire. Weatherill, Solicitor, Guisborough, Yorkshire. Jan. 5.

HYDE, FREDERICK AUGUSTUS, Esq., Chenies, Bucks. Theobald, Solicitor, 16, Furnival's-inn, London. Jan. 1.

OSBORNE, THOMAS, Yeoman, Darnford, Lichfield. Hand, Solicitor, Uttoxeter, Staffordshire. Feb. 1.

STROUD, JOHN, Inn Keeper, Crown and Anchor Tavern, Sheerness, Isle of Sheppey, Kent. Essell, Knight, & Arnold, Solicitors, the Precinct, Rochester. Jan. 13.

THOMPSON, JOSEPH, Architect, Leeds and Roundhay, Yorkshire. Nelson, Bulmer, & Nelson, Solicitors, Leeds. Jan. 31.

FRIDAY, Dec. 14, 1860.

BENHAM, WILLIAM, Gent., Wokingham, Berks. Soames & Cooke, Solicitors, Wokingham, Berks. April 8.

CHERMSIDE, SIR ROBERT ALEXANDER, M.D., formerly of Portaferry, Down, Ireland, afterwards of Paris, and late of Beaumont-street, Oxford. Rawlinson, Solicitor, Chipping Norton, Oxfordshire. Feb. 1.

EAMES, FRANCIS, Pawnbroker & General Salesman, and carrying on business in Nottingham, late of Quorndon, Derbyshire. Hunt & Son, Solicitors, Weekday Cross, Nottingham. Jan. 21.

GOODBURN, JAMES, formerly a Butcher, 18, John-street, Newcastle-upon-Tyne. Johnston, Solicitor, 2, Collingwood-street, Newcastle-upon-Tyne. March 1.

HOMEVER, DANIEL, Gent., 4, Sheffield-terrace, Campden-hill, Kensington, Middlesex. Wilkinson, Stevens, & Wilkinson, Gents., 4, Nicholas-lane, Lombard-street, London. Jan. 1.

KING, SUSANNAH MARY, Spinster, formerly of Kingston, Surrey, and late of Princes-street, Oxford-street, Middlesex. Smythe, Solicitor, 7, Boswell-court, Lincoln's-inn. July 1.

MORRIS, THOMAS, Farmer & Valuer, Ranscombe, Southmalling, Sussex. Auckland & Hillman, Solicitors, Cliffe, near Lewes, Sussex. Jan. 7.

MOUNTAIN, CHARLOTTE MARY MILES, Spinster, Havant, Southamptonshire. Wilkinson, Stevens, & Wilkinson, Gents., 4, Nicholas-lane, Lombard-street, London.

PEACOCK, ANN, Widow, Shakespeare-street, Newcastle-upon-Tyne. Joel, Solicitor, 76, Grey-street, Newcastle-upon-Tyne. March 16.

POSSETT, JOHN, Farmer, Preston Candover, Southamptonshire. De Jersey & Mickiem, Solicitors, 13a, Gresham-street, West, London. Jan. 4.

SIMPSON, ANNA MARIA, Widow, Elm Grove, Norwood, Surrey. Blake & Snow, Solicitors, 22, College-hill, City. Jan. 1.

STROTHER, ARTHUR, Surgeon, Darlington, Durham. Peacock, Solicitor, Darlington. Jan. 5.

YOUNG, MARY, Carlton House, Richmond Park, Clifton, Bristol. Clark, Fussell, & Prichard, Solicitors, Bristol. Feb. 21.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, Dec. 11, 1860.

ALLWOOD, ANDREW, Gent., Oxton-road, Birkenhead, Chester. Allwood *v.* Allwood, V.C. Stuart. Jan. 8.

CONCHA, JUAN JOSE, Gent., a native of Santiago, Chili, formerly of Lima, in Peru, and late of 3, Adam-street, Adelphi, Strand, Middlesex. Mora and Another *v.* Concha and Another, V.C. Wood. July 12.

MACPHERSON, KENNETH, Esq., formerly of the Isle of Man, afterwards of London, and late of Mount Vernon and Moffatt, St. Thomas in the East, Island of Jamaica. M.R. Feb. 26.

SANDIFORD, ELIZABETH, Widow, 61, Alma-street, New North-road, Hoxton, Middlesex. Hilliker *v.* Tyler, M.R. Jan. 11.

WRIGHT, MARTHA, Widow, Kingston-upon-Thames, Surrey. White *v.* Brown, V.C. Wood. Jan. 8.

WOOD, JOHN, Ironmonger and Toy Dealer, 29, Garden-street, Brighton. Taylor *v.* Wood, M.R. Jan. 11.

(County Palatine of Lancaster).

LLOYD, THOMAS, Silk Dyer, Mill-street, Toxteth-park, Liverpool, and Scotland-road, Liverpool. Archer *v.* Bird, Registrar for Liverpool District, 1, North John-street, Liverpool. Jan. 8.

FRIDAY, Dec. 14, 1860.

EVANS, EVAN LLOYD JONES, Gent., Llewesogion, Llanrhaidr-yn-Cinmerch, Denbighshire. Evans *v.* Price, M.R. Jan. 14.

FOSS, JOHN, Gent., Derby. Foss *v.* Bassano, M.R. Jan. 14.

FRANCIS, RICHARD STIBERON, Printer, Catherine-street, Strand, and 25, Museum-street, Bloomsbury, Middlesex. Penny *v.* Francis, M.R. Jan. 11.

SADLER, ZEBEDEE, Gent., Burleydam, Cheshire. Davies *v.* Dawson, M.R. Jan. 11.

STEPHENS, WILLIAM, Gent., Shaldon, Devonshire. Tozer *v.* Babbage, V.C. Kindersley. Jan. 22.

STUTELY, MARTIN, Esq., 6, Cambridge-terrace, Regent's-park, Middlesex, and proprietor of the warehouse called the North London Depository, Gray's-inn-lane. Stutely *v.* Kopp, V.C. Stuart. Jan. 21.

(County Palatine of Lancaster.)

FRIDAY, Dec. 14, 1860.

CAHILL, JANE, Seaforth, near Liverpool. Cahill *v.* Wood, Office of Registrar, 1, North John-street, Liverpool. Jan. 10.

CAHILL, BARTHOLOMEW, Master Mariner, Liverpool. Cahill *v.* Wood, office of Registrar, 1, North John-street, Liverpool. Jan. 10.

Assignments for Benefit of Creditors.

TUESDAY, Dec. 11, 1860.

BENT, JOHN, Jun., Grocer and Provision Dealer, Kate's-hill, Dudley. Nov. 28. *Sol.* Wood, New-street, and Kate's-hill, Dudley.

BIRKETT, JACOB, Draper, Lancaster. Nov. 13. *Sols.* Langford & Marsden, 59, Friday-street, Cheapside, for Sale, Worthington, Shipman, & Seddon, 29, Booth-street, Manchester.

COTTAM, JOHN HENRY, Machine Maker, Kirton-in-Lindsey, Lincolnshire. Nov. 30. *Sol.* Hayes, Gainsborough.

EDLESTON, JOHN, Grocer, Halifax, Yorkshire (Edleston Brothers). Nov. 15. *Sol.* Cronhelm, Halifax.

FLOOD, THOMAS, Manufacturer, Gomersal and Bradford, Yorkshire. Dec. 4. *Sols.* Scholes & Son, Dewsbury.

FOTHERGILL, JOHN, & JAMES BENTLEY PAGE, Bone Merchants and General Merchants, Nottingham (John Fothergill & John Fothergill & Co.) Nov. 15. *Sols.* Parsons & Son, Nottingham.

FROGGATT, WILLIAM THOMAS, Butcher, Sissinghurst, Cranbrook, Kent. Dec. 5. *Sol.* Hinds, Goudhurst, Kent.

GRINT, JANE ELIZABETH, Widow, Corn Dealer, Wandsworth, Surrey, and HENRY GRINT, Corn Dealer, Wandsworth, Surrey. Nov. 26. *Sol.* Corsellis, Wandsworth.

HATTON, WILLIAM, Grocer, 32, Broad-street, Bloomsbury, Middlesex. *Sol.* Bell, 102, Leadenhall-street, London.

HILLSDON, JOHN, sen., & JOHN HILLSDON, jun., Engineers, Tring, Hertfordshire. Dec. 7. *Sol.* Shugar, Tring.

JONES, THOMAS, Builder & Innkeeper, Silloth, Cumberland. Nov. 30. *Sol.* Donald, 52, Castle-street, Carlisle.

KING, HARRY JAMES, Draper, Swansea, Glamorganshire. Nov. 21. *Sols.* Davidson, Bradbury, & Hardwick, Weavers Hall, 22, Basinghall-street.

TYACK, THOMAS, Ironmonger, Camborne, Cornwall. Dec. 7. *Sol.* Downing, Redruth, Cornwall.

WRESSELL, JAMES, Lodging-house Keeper, Ventnor, Isle of Wight. Nov. 9. *Sol.* Fisher, Ventnor.

FRIDAY, Dec. 14, 1860.

BURN, GEORGE, The Retreat, Gate Helmsley, Yorkshire. Dec. 8. *Sols.* Leeman & Clark, York.

CLARK, FREDERICK, Jeweller, Church-street, Liverpool. Nov. 26. *Sol.* Bustard, 25, Philpot-lane, London.

CLOUGH, BENJAMIN MORLEY, Attorney & Solicitor, Worksop, Nottinghamshire. Dec. 10. *Sols.* Cartwright & Son, Bawtry, York.

CROWDER, WILLIAM TAYLOR, Roper, Barrow-upon-Humber, Lincolnshire. Dec. 5. *Sol.* Brown, Barton-upon-Humber.

FINLAY, JOHN HUNTER, Tea Dealer & Draper, Bridgwater, Somersetshire. Dec. 10. *Sol.* Henderson, 50, Broad-street, Bristol.

PAKENHAM, THOMAS JAMES, Milliner, 82, Cross-street, Manchester. Dec. 3. *Sols.* Cooper & Sons, 44, Pall-mall, Manchester.

SIMONS, GEORGE, Manufacturer of Fancy Hosiery, Wellington-street, Leicester. Nov. 24. *Sol.* Haxby, 11, Belvoir-street, Leicester.

SOUTHEE, SARAH GURNEY, Widow, Wingham, Kent, lately carrying on the business of a Miller, at Ickham, Kent. Dec. 10. *Sols.* Furley & Callaway, Canterbury.

Bankrupts.

TUESDAY, Dec. 11, 1860.

BROOME, HENRY ALFRED, Licensed Victualler, Crown & Cushion, 9, Russell-street, Covent-garden, Middlesex. *Com.* Holroyd: Dec. 21, at 2; and Jan. 29, at 1; Basinghall-street. *Off. Ass.* Edwards. *Sol.* Bruton, 27, Basinghall-street, London. *Pet.* Dec. 10.

CLOUGH, RICHARD HENRY, Cotton Dealer & Waste Dealer, Manchester. *Com.* Jemmett: Dec. 27, and Jan. 18, at 1; Manchester. *Off. Ass.* Hernaman. *Sol.* Pemberton, Liverpool. *Pet.* Nov. 24.

HATWARD, JOHN ROBERT SAMUEL, Apothecary, Lodway, Somersetshire. *Com.* Hill: Dec. 24, and Jan. 22, at 11; Bristol. *Off. Ass.* Acraman. *Sol.* Clifton, Nicholas-street, Bristol. *Pet.* Nov. 30.

KNIGHTS, HENRY RUDD, Currier, 94, Bermondsey-street, Surrey. *Com.* Holroyd; Dec. 2, and Jan. 29, at 12; Basinghall-street. *Off. Ass.* Edwards. *Sol.* Hand, 22, Coleman-street, London. *Pet.* Dec. 7.

LENNARD, EDWARD WILLIAM, Grocer & Baker, Redcar. Yorkshire. *Com.* Ayrton: Dec. 21, and Jan. 21, at 11; Leeds. *Off. Ass.* Hope. *Sols.* Cariss & Cudworth, Leeds. *Pet.* Dec. 10.

MANSFIELD, ELIAS, Boatwright, Timber Dealer, & Publican, Chesterton, Cambridgeshire. *Com.* Evans: Dec. 20, at 1; and Jan. 24, at 2; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Tarrant, Bond-court, Walworth; or Whitehead & French, Cambridge. *Pet.* Dec. 10.

MARTIN, JOHN WEDD, Farmer & Dealer in Wood & Hop Poles, Moor Farm, Yalding, Kent. *Com.* Goulburn: Dec, 21, and Jan. 21, at 12; Basinghall-street. *Off. Ass.* Pennell. *Sols.* Doyle, 2, Verulam-buildings, Gray's-inn, London; or Morgan, Maidstone, Kent. *Pet.* Dec. 8.

SCOTT, JOHN, jun., & RICHARD WOODWARD POWELL, Tea Merchants, Liverpool (Scott, Powell, & Co.) *Com.* Perry: Dec. 20, at 11; and Jan. 16, at 1; Liverpool. *Off. Ass.* Cazenove. *Sols.* Lowndes, Bateson, Lowndes, & Robinson, Brunswick-street, Liverpool. *Pet.* Dec. 3.

STATES, CHARLES, Club-house Keeper & Victualler, Aldershot, Southampton. *Com.* Fonblanque: Dec. 21, at 12: and Jan. 23, at 1; Basinghall-street. *Off. Ass.* Graham. *Sol.* Muriess, 3, Great James-street, Bedford-row, London. *Pet.* Dec. 8.

STEAD, CHARLES, Flock & Cotton Waste Dealer, Huddersfield, Yorkshire. *Com.* West: Dec. 21, and Jan. 25, at 11; Leeds. *Off. Ass.* Young. *Sols.* Snowdon & Emmet, Bond-street, Leeds; or Brooks, Marshall, & Brooks, Ashton-under-Lyne. *Pet.* Nov. 26.

TAYLOR, EDWIN, Butcher, Wimbourne, Dorsetshire. *Com.* Holroyd: Dec. 21, and Jan. 29, at 1; Basinghall-street. *Off. Ass.* Lee. *Sols.* Church, Langdale, & Prior, Southampton-buildings, London. *Pet.* Dec. 8.

TILLETT, FREDERIC, Spiral Flambeaux Scale Board & Splint Manufacturer, 71, Banner-street, St. Luke's, Middlesex, and 12 and 13, Wellington-road, Bethnal-green, Middlesex, Timber Merchant. *Com.* Fane: Dec. 21, and Jan. 25, at 12; Basinghall-street. *Off. Ass.* Cannan. *Sols.* Miller, Son, & Day, 16, Philpot-lane. *Pet.* Oct. 13.

WHITAKER, JOHN BROTHERTON, Card & Paste Board Maker, 13 & 14, Little Britain, London. *Com.* Evans: Dec. 21, at 12; and Jan. 24, at 1; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Fisher & Sons, Aldersgate-street. *Pet.* Dec. 7.

BANKRUPTCIES ANNULLED.

LINLEY, JOSEPH, Manufacturer of Sheep Shears, Edge Tools, & Table Knives, Sheffield. Oct. 27.

M'LIVER, WILLIAM KIRKWOOD, Draper, Stonehouse, Devonshire. Dec. 10.

FRIDAY, Dec. 14, 1860.

BARTLE, JOHN, Lace Manufacturer, Lenton, Nottingham. *Com.* Sanders: Dec. 27, and Jan. 17, at 11; Nottingham. *Off. Ass.* Harris. *Sol.* Maples, Nottingham. *Pet.* Dec. 7.

BILLIET, VICTOR PASCAL, Importer of French Clocks and Musical Boxes, 28, King-street, Cheapside, London. *Com.* Fonblanque: Dec. 28, at 1; and Jan. 23, at 2; Basinghall-street. *Off. Ass.* Stansfeld. *Sol.* Reed, 1, Guidhall-chambers, London. *Pet.* Dec. 13.

BOWDITCH, GEORGE, Nurseryman & Seedsman, Taunton, Somersetshire. *Com.* Andrews: Jan. 2, and 30, at 12; Exeter. *Off. Ass.* Hirtzel. *Sols.* Trenchard, Taunton, or Turner & Hirtzel, Exeter. *Pet.* Dec. 13.

BRIDGER, CHARLES, Builder & Coal Merchant, Halesmere, Surrey, and also of Liphook, Hants. *Com.* Fonblanque: Dec. 29, at 12.30; and Jan. 25, at 12; Basinghall-street. *Off. Ass.* Graham. *Sols.* Hobbs & Weedon, 63, Cornhill, London. *Pet.* Dec. 13.

COLEY, JOHN, Ironmonger, Tipton, Staffordshire. *Com.* Sanders: Jan. 18, and Feb. 1, at 11; Birmingham. *Off. Ass.* Kynnear. *Sols.* Hodgson & Allen, Birmingham. *Pet.* Dec. 6.

FOSTER, ALFRED, Woolstapler, Bradford, Yorkshire. *Com.* Ayrton: Jan. 7, and 28, at 11; Leeds. *Off. Ass.* Hope. *Sols.* Stocks & Franklin, Halifax, or Bond & Barwick, Leeds. *Pet.* Dec. 5.

HALL, JOHN, Wharfinger, Purfleet-wharf, Camden Town, Middlesex. *Com.* Goulburn: Dec. 24, at 1.30; and Jan. 28, at 12; Basinghall-street. *Off. Ass.* Pennell. *Sol.* Reed, 1, Guildhall-chambers, Basinghall-street, London. *Pet.* Dec. 12.

KNIGHTS, HENRY RUDD, Currier, 94, Bermondsey-street, Surrey. *Com.* Holroyd: Dec. 21, & Jan. 29, at 12; Basinghall-street. *Off. Ass.* Edwards. *Sol.* Hand, 22, Coleman-street, London. *Pet.* Dec. 7.

MACK, ROBERT, Extractor of Wool from Rags, Cork-street, Camberwell, Surrey. *Com.* Evans: Dec. 28, at 1.30; and Jan. 26, at 11; Basinghall-street. *Off. Ass.* Bell. *Sol.* Reed, 1, Guildhall-chambers. *Pet.* Dec. 12.

MORROW, JOSEPH CUNARD, and ROBERT THOMAS MORROW, Ship Brokers, Liverpool. *Com.* Perry: Dec. 28, and Jan. 18, at 11; Liverpool. *Off. Ass.* Bird. *Sols.* Dodge & Wynne, Liverpool. *Pet.* Dec. 10.

ROE, WILLIAM, Grocer & Provision Dealer, Caiverton, Nottinghamshire. *Com.* Sanders: Dec. 27, and Jan. 17, at 11; Nottingham. *Off. Ass.* Harris. *Sols.* Cowley & Everall, Nottingham. *Pet.* Dec. 13.

SAUNDERS, HENRY, Cabinet Maker & Upholsterer, 22, Western-road, Brighton. *Com.* Evans: Dec. 28, at 1.30, and Jan. 26, at 12; Basinghall-street. *Off. Ass.* Johnson. *Sol.* Treherne, 17, Gresham-street. *Pet.* Oct. 31.

SOMERVILLE, MATTHEW, Joiner & Packing Case manufacturer, Liverpool. *Com.* Perry: Dec. 31, & Jan. 16, at 11; Liverpool. *Off. Ass.* Turner. *Sols.* Snowball & Copeman, Liverpool. *Pet.* Dec. 11.

STANNARD, JAMES, Trader, Newport, Isle of Wight. *Com.* Goulburn: Dec. 24, and Jan. 28, at 2; Basinghall-street. *Off. Ass.* Pennell. *Sols.* J. & J. H. Linklaters & Hackwood, 7, Walbrook, London, or Pittis, Newport, Isle of Wight. *Pet.* Dec. 6.

STURGIS, OWEN, Builder, 4, Upper Belsize-terrace, Belsize-lane, Hampstead, Middlesex. *Com.* Evans: Dec. 27, at 1.30, & Jan. 24, at 11; Basinghall-street. *Off. Ass.* Johnson. *Sol.* Page, Manchester-square. *Pet.* Dec. 10.

WHITE, JAMES, Miller & Farmer. Ivy House Farm, Chiddingston, Kent. *Com.* Goulburn: Dec. 24, at 11, & Jan. 28, at 11.30; Basinghall-street. *Off. Ass.* Penneil. *Sols.* Atkinson, Pilgrim, & Phillips, Church-court, Lothbury, London. *Pet.* Dec, 13.

WOOD, JOHN, Licensed Victualler, Birkenhead, Cheshire. *Com.* Perry; Dec. 28 & Jan. 16, at 11; Liverpool. *Off. Ass.* Cazenove. *Sols.* Woodburn & Pemberton, York-buildings, Dale-street, Liverpool. *Pet.* Dec. 10.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, Dec. 11, 1860.

AAS, GUNDER ANTHON MARTIN, Ship Broker, 19, Colchester-street, London. Jan. 2, at 1; Basinghall-street.—BARTLETT, JAMES BENONI, & WILLIAM ANGEL BARTLETT, Tailors & Drapers, Bristol. Jan. 10, at 11; Bristol.—BELL, WILLIAM, Miller, Urpeth Mill, Chester-le-street, Durham. Jan. 10, at 11.30; Newcastle-upon-Tyne.—FRYER, WILLIAM, Boot & Shoe Manufacturer, Norwich (W. Fryer & Co.) Jan. 8, at 12; Basinghall-street.—GOODACRE, RICHARD, Grocer & Tea Dealer, Nottingham. Dec. 27, at 11; Nottingham.—HORROCKS, RICHARD, Baker & Flour Dealer, Liverpool. Jan. 4, at 11; Liverpool.

FRIDAY, Dec. 14, 1860.

BARLOW, JOHN, Earthenware Dealer, Cobridge, Burslem, Staffordshire. Jan. 7, at 11; Birmingham.—BINNING, HENRY, & GEORGE DOWSON, Ship Owners, Middlesborough, Yorkshire. Jan. 4, at 11; Leeds.—BROOKES, THOMAS, Innkeeper, Birmingham. Jan. 7, at 11; Birmingham.—DENMAN, CHRISTOPHER, Linen Draper, Ripley, Derbyshire. Jan. 10, at 11; Nottingham.—DAWSON, JOHN WAUGH, Cotton Spinner, Newcastle-under-Lyme, Staffordshire. Jan. 30, at 11; Birmingham.—GOODE, BENJAMIN GELDART, Brickmaker, Scratage Brickfields, and of Sutton House, Sutton, near Hounslow, Middlesex. Jan. 8, at 1; Basinghall-street.—LORD, JOHN, SIDNEY AQUILLA BUTTERWORTH, & HORATIO BUTTERWORTH, Dyers, Shelf, near Halifax, Yorkshire (J. Lord & Co.) Jan. 4, at 11; Leeds. Separate estate of Sidney Acquilla Butterworth. Same time, sep. est. of Horatio Butterworth.—MERAIMAN, JAMES, Lace Manufacturer, Hyson-green, Nottinghamshire. Jan. 10, at 11; Nottingham.—MORGAN, HENRY EDGAR, Confectioner & Biscuit Baker, 71, St. Giles-street, St. Mary Magdalen, Oxford. Jan. 4, at 11.30; Basinghall-street.—PENNY, ALFRED, Coal Merchant, 2, Richmond-villas, Holloway, Middlesex, and late of Wharf-road, City road, and Underwriter, Lloyd's Coffee-house, London. Jan. 8, at 2.30; Basinghall-street.—PHILP, ROBERT KEMP, Publisher, 24, Great New-street, Fetter-lane, London. Jan. 18, at 12; Basinghall-street.—ROBSON, SAMUEL, Hotel Keeper & Wine & Spirit Merchant, White Swan Hotel, York.—SELKE, ISIDOR, Provision Merchant, 4, Postern-row, Tower-hill, Middlesex. Jan. 11, at 12; Basinghall-street.

We cannot notice any communication unless accompanied by the name and address of the writer

*** *Any error or delay occurring in the transmission of this Journal should be immediately communicated to the Publisher.*

THE SOLICITORS' JOURNAL.

LONDON, DECEMBER 22, 1860.

CURRENT TOPICS.

The Lord Chancellor, in a judgment on Thursday last, took occasion to observe upon the importance of judges delivering written instead of oral judgments, in cases where complications, either of facts or law, give rise to any risk of misunderstanding by the parties to whom the judgment is delivered. In the case on appeal before his lordship, the judgment of the Vice-Chancellor occupied forty quarto pages closely printed. Alluding to this fact, his lordship thus expressed himself:—"I should have disposed of the appeal, not only with less labour to myself, but more satisfactorily and more confidently, had the judgment been more condensed. My attention has been diverted from the main questions in the case by elaborate and minute disquisitions as to the bearing of contradictory evidence on subordinate points, and by following the devious paths by which the final conclusion is at last reached. Judgments of such prodigious length, instead of settling, have a tendency to unsettle the law; and, instead of sending the defeated party away contented, I can say by experience since I have presided in this court, that they rather generate appeals: for, although the decree be right, some of the various reasons given for it may be questionable, and a false hope excited that, impugning these, the decree may be reversed. The verdicts of juries are generally acquiesced in, perhaps because they are given without reasons. An equity judge, who has to determine questions of fact, cannot follow this course; but there is no necessity for his stating from his tribunal all that passed through his mind during his deliberations, with all his doubts and his wanderings. I will further venture to declare my hearty concurrence in the opinion frequently expressed by one of the most distinguished of my predecessors, Lord Chancellor Brougham, that when, on account of the importance and difficulty of a case, judges, after having heard it argued at the bar, take time to consider, they will do well by delivering *a written judgment*. The judgments even of Lord Eldon would have been still more valuable had he adopted this practice, imitating the example of that illustrious judge, his brother, Lord Stowell, who, by his written judgments, has composed a code of international maritime law admired and respected by all civilized nations."

There is a very general feeling, not only in the profession but among suitors, in accordance with what the Lord Chancellor has so well expressed; and his lordship has himself furnished a very remarkable illustration of the possibility of accomplishing what is in itself so desirable. Since the long vacation, Lord Campbell has heard and disposed of an unusually large number of appeals, some of them involving complicated issues of fact and difficult questions of law, and in nearly every case has delivered a written judgment within a week or two after the appeal was argued. As all these judgments are written by his lordship *proprio manu*, and some of them necessarily involve a great deal of irksome and sedentary manual labour, the wonder is how any judge, who is compelled to sit day by day hearing cases, can have sufficient time and energy for what the Lord Chancellor has been doing since he gained the woolsack. What the Vice-Chancellor Wood said on this subject last year at Bradford, will be in the memory of many of our readers. That learned and laborious judge there expressed a horror—in which most lawyers can sympathize with him—at the mechanical labour of much writing. The number of men who are physically capable of habitually of an evening filling a quire of paper with the results of an anxious consideration of arguments which they spent the day in hearing, is extremely small—perhaps not one in a thousand. It would be almost as reasonable to expect that a prima donna, who has in the evening to sustain the weight of an opera, should be prepared, as a rule, to teach in the morning in Mr. Hullah's school; or that one of Astley's acrobats should be always competent to discharge the duties of a night watchman. There are certain bounds to the physical powers of man, although they appear to constitute one of the few subjects with which Lord Campbell is not well acquainted. It would be out of all reason, as a rule, from a Vice-Chancellor, to look for written judgments, except in such cases as those alluded to by the Lord Chancellor. In those, however, it is almost as unreasonable to expect that suitors can be satisfied without the accurate consideration of their cases which is implied in written compositions. It is worthy of remark that in France and other continental countries all important judgments are delivered in writing; and we believe the same rule is invariably observed in Scotland.

From all parts of the country, but especially from the north, complaints are made of the comparative impunity of crime, which arises from the inadequate remuneration of witnesses for the prosecution. We published, at the time, the important memorial upon this subject of the Liverpool grand jury, who stated, that in the course of their experience, they had found a decided disinclination to assist in the prosecution of offenders, inasmuch as not only personal inconvenience but pecuniary loss is generally the fate of prosecutors under the new scale of allowances. Only two or three weeks ago a similar complaint was made to the magistrates of the Surrey sessions, not by the grand jury, but by a poor man, who, at the risk of his life, apprehended a violent thief, whom he afterwards prosecuted to conviction. The least that such a prosecutor might expect, would be that he should not be called upon to suffer the loss of money at the hands of the state, in addition to the violence to which he was exposed at the hands of the criminal. In our present number will be found a copy of another memorial on the same subject, from the grand jury of the county of York, at the winter assizes. The Government are now, at all events, in possession of abundant evidence to show that unless—as was observed by the Liverpool grand jurors—"a more equitable system be adopted for the payment of witnesses in criminal cases, the criminal law will become practically a failure." The mistake of the present scheme appears to be the uniformity of the scale of allowances for the entire kingdom, and also the want of sufficient classification, for the purpose of payment of witnesses. On this point the Liverpool grand jurors well remark upon the impolicy of a scale which does not enable the payment of any witnesses at a higher rate than the wages of an unskilled labourer—except in the case of the two professions of law and medicine.

We have just received a copy of an important Act passed by the Parliament of South Australia, and which received the royal assent two months ago. It is entitled "An Act to Consolidate and Amend certain Acts relating to the Transfer and Encumbrance of Freehold and other Interests in Land," and is intended to be a consolidation of the entire law of real property in that province. We have already given some account of what has been done there under former statutes, in the way of facilitating the transfer of land by means of a system of registration; and we have now before us the

last report of Mr. Torrens, the registrar-general, which explains not only the principles of the South Australian scheme, but also its machinery and details. It further gives an account of the progress and working of the system; and suggests certain amendments of the law which experience has shown to be necessary—for the purpose of having them embodied in the Act to which we have referred, while it was under the consideration of the provincial parliament. We are aware, of course, that considerable differences of opinion exist as to the feasibility in this country of any system of registration—whether of title or of assurances—and also as to the effect upon the profession of the introduction amongst us of any such mode of land transfer. But it is obviously desirable that all parties should be in possession of whatever important facts relate to this interesting subject; and it is impossible to regard without interest the bold experiment which is now being made in Australia, although it would be absurd to leave out of consideration the very different circumstances of the two countries in respect of conveyancing. We shall content ourselves with taking an early opportunity of placing before our readers, for their information, a sketch of the Australian Act, and of Mr. Torrens' report.

We are glad to find the number of Law Societies gradually increasing throughout the country. Within a few days a promising Society has been established at Leicester, which appears to have taken for its model the Liverpool Law Society. Provincial Societies have it in their power to accomplish, or to aid in the accomplishment of much good, both to the profession and the public, by bringing the experience of local practitioners to bear upon the moot questions of the day. In this respect, as might have been expected, the Liverpool and Manchester Societies have led the way in the provinces, and by their reports from time to time have done good service. Societies in smaller provincial towns, therefore, can hardly do better than imitate models like these.

Entering upon the time-honoured season of kindness and liberality, when instinctively every Englishman likes to turn towards some benevolent channel where he can bestow a Christmas donation, we think it not an unfitting time to call the attention of the profession to the claims of the Solicitors' Benevolent Association—an institution with whose valuable objects we presume our readers are by this time familiar. By an advertisement in our columns this day we notice that there are nearly one thousand members of the profession already enrolled in the society, and that the invested capital amounts to £4,277.

We can only say that with the undoubted claims upon the sympathy and support of the profession as a body, which the institution possesses, we sincerely hope to find that, with the commencement of the new year, those figures will be very considerably augmented if not doubled.

It is rumoured that Mr. Phinn, Q.C., has been appointed Chief Justice of Madras, in the place of Sir Henry Davison, lately deceased. The salary is said to be seven thousand pounds a-year.

Parliament has been further prorogued to the 5th day of February next, on which day it is to assemble for the despatch of business.

IS THE HOUSE OF LORDS BOUND BY ITS OWN DECISIONS?

In our last number we discussed the question how far a court is bound by the decision of another court of co-ordinate jurisdiction; and we there suggested the general rule to be, that co-ordinate courts bound one another authoritatively by their decisions; and that exceptions from the rule were admissible only when the previous decision was manifestly grounded in mistake, or could not be followed without leading to some manifest absurdity or repugnancy. In the course of the discussion we were incidentally led to the further question, how far a court itself is bound by its own previous decisions. This question, again, appears under different aspects, according as the court is engaged on a final decision, or on one which admits of an appeal to a higher tribunal. Do these circumstances at all vary the problem, and lead to different conclusions? We propose, on the present occasion, to examine briefly these questions, and chiefly as to their practical bearing in our superior courts, whose judgments are subject to revision in a court of appeal, and in our courts of final appeal, as the Judicial Committee of the Privy Council and the House of Lords.

Both these questions seem to lie within the province of what is called judicial discretion, that is to say, the courts have power to dissent from their own decisions, but are bound in duty to exercise it according to the established rules of sound legal discretion; and the true question at present appears to be, have any rules of discretion been laid down upon the matter with such authority and precision as to amount to law, and exclude an arbitrary judgment? When we turn to examine the practice of the courts, and to inquire the opinions of the learned judges, as the only safe sources from which such rules may be deduced, we are at once struck with the dearth, or rather complete absence, of any trace of definite doctrine upon the subject, until quite recent times; and we might not unreasonably infer from this circumstance that the importance of the question is of recent growth, and that the progressive settlement of the law relating to the general jurisdiction and practice of the judicature has only recently brought this question to light, and revealed the necessity for a reasonable solution. The fact, however, seems unquestionable, that notwithstanding much discussion has recently prevailed, very little progress has yet been made towards a final settlement, and very slender materials provided for a certain conclusion.

If we examine the theory upon which our courts of justice are constituted, and the objects which they are ordained to satisfy, amongst which the most prominent is the accurate and authoritative exposition of the law of the land, we should be inclined to maintain that one of the necessary consequences of the right fulfilment of their functions would be, that the decisions delivered at one time as declaratory of the law, should be binding upon them at any future time *in pari materiâ*, and should be open to review only by the constitutional process, where possible, of an appeal to a higher court. When, however, we extend our considerations to the practical infirmities to which courts in common with all human institutions are subject, and their liability to deception or mistake or inadvertence, we should be inclined to say that where from any cause they had failed to exercise a deliberate judgment on the point decided, they should not be excluded from their proper function of deliberation, whenever the same point on a future occasion arises before them. To admit the principle of replacing one deliberate judgment by another deliberate judgment of precisely the same value and authority, would tend to no advantage to the public, though the substitution might satisfy the logical qualms of the individual members of the Court, while it would certainly introduce great uncertainty in the law, and expose every judgment to doubt and impeachment. Human infirmity may be objected equally to every decision, and seems to require that a deliberate judgment should not be reviewed except by the submission of it to another judgment less liable to infirmity. On the other hand, to maintain that a court is bound by a doctrine which has been decided only in form, without any

deliberation being properly exercised upon it, certainly sounds harsh and repulsive to reason and common sense.

The practice of our courts on these points, we have already had occasion to remark, is very obscure, and the language of the judges is very scanty; but so far as we can judge from such imperfect and inconclusive materials, we venture to think that the prevailing opinion is in accordance with the suggestions contained in the above observations. We find it frequently asserted that a court has the right, meaning thereby that on certain occasions a court can properly and wisely exercise a right, to review its own decision. We endeavoured to show in our recent article that though a court is in general bound by the deliberate judgment of a court of co-ordinate jurisdiction it will certainly review such decision where it has manifestly issued improvidently, and under the influence of mistake or misinformation, or where it leads in its consequences to palpable absurdity or contradiction; and it seems impossible to deny to a court the same discretion in reviewing its own decisions which is accorded to it in respect of the decisions of co-ordinate courts, seeing that if any liberty of the kind is admitted at all, a court would probably treat its own decisions with less deference and respect than those of co-ordinate courts, and would at least be perfectly imbued with a consciousness of the motives and considerations which formerly called forth the decision, and which now constitute the ground for its recall.

It happens that some of our courts have been invested with a jurisdiction of final appeal in certain matters, while in other matters they exercise a jurisdiction which may be appealed against. For instance, the ordinary jurisdiction of the superior courts of common law is subject to appeal, but their jurisdiction on appeals from the county courts is final; so also the Court of Queen's Bench decides finally upon appeals from quarter sessions, and from magistrates; and the Court of Common Pleas decides finally on appeals from the decisions of the revising barristers. A court thus deciding on final appeal, it is said, has a special privilege of reviewing the decisions of co-ordinate courts, or its own decisions which have been delivered in its non-appellate capacity. Thus in *Taylor* v. *Burgess*, (5 H. & N. 1), Pollock, C. B. expressed the following opinion:—"When a case can be taken to a court of error, the decision of one court of co-ordinate jurisdiction ought to be binding on the others. Where, however, there is no means of appealing to a court of error, there is not the same obligation to follow the decision of another court; and accordingly we sometimes find courts of co-ordinate jurisdiction differing from each other." In *R.* v. *Broadhempton*, (5 Jur. N. S. 267,) an appeal from Quarter Sessions to the Queen's Bench, a decision of that Court (*R.* v. *East Stonehouse*) being cited, Lord Campbell, C. J., said:—"If I thought that decision wrong I should not hesitate to overrule it, because the case could not be carried to a higher tribunal." The distinction here pointed out seems free from objection, at least to the extent above defined. It would be idle to give an appeal to a Court without investing it with any power of reviewing the expositions of law upon which the judgments appealed against are founded. If, however, this exceptional privilege of the Court to review its own decisions be extended to those which it has previously delivered in its final appellate character, as suggested by the case in which the dictum of Lord Campbell occurs—for the judgment there submitted to review was of that character—it opens the whole question with respect to courts of final appeal, and we shall presently show that on more recent and more solemn occasions his Lordship has repeatedly expressed a contrary opinion.

The latter question, namely, how far a court of final appeal is bound by its own previous decision, arises more especially with reference to the conclusive effect of decisions in the Privy Council and the House of Lords—our highest courts of appeal; and we have fortunately more ample materials for examining into the state of the question with respect to these tribunals. In the first place, we may make the observation, and it is not an unimportant one, that although much discussion has been lately excited about this question, no instance has been cited in which either of these tribunals has reviewed a former deliberate decision, or at all committed itself to the doctrine that it was free to do so. The case of *Keilley* v. *Carson* (4 M. P. C. C. 63) is sometimes cited as an instance where the Privy Council decided contrary to an opinion which it had previously expressed in the case of *Beaumont* v. *Barrett* (1 M. P. C. C. 58) but the question as to the liberty of the Court in dealing with a former decision was not touched upon further than that Parke, B., who delivered the judgment in both cases, carefully avoided any conclusion with respect to it by saying in the latter judgment, "the opinion (in *Beaumont* v. *Barrett*) delivered by myself, immediately after the argument was closed, was not the only ground on which that judgment was rested, and therefore was in some degree extra-judicial; but besides, it was stated to be and was founded entirely on a dictum of Lord Ellenborough, which we all think cannot be taken as an authority for the abstract proposition." On the other hand, instances may be cited where the House of Lords and Privy Council have followed their own decisions, notwithstanding the strongest opinions expressed both in and out of the court against them. Take for example the case of *Fletcher* v. *Sondes* (1 Bligh. N. S. 144), on resignation bonds. Respecting these bonds it was said by one of the learned judges in that case: "But for the judgment of the House of Lords in the case of *The Bishop of London* v. *Ffytche*, I will venture to say that there never was a lawyer from the times when tithes were first granted to the present who would not without hesitation have said they were not void either by the statute or the common law." Nevertheless the Lord Chancellor Eldon moved the judgment of the House in the following language: "Addressing your lordships as one of the courts of justice, and not as a legislative body, it is my duty not to argue or state this case now on any other grounds than grounds of law. If the state of the law upon this subject is such that your lordships, looking at it as legislators, deem it fit that an Act should be passed to relieve against the law, that consideration ought not to affect, and therefore cannot affect, your lordships' decisions as judges. Before the decision in the *Bishop of London* v. *Ffytche* this bond might have been held to be legal. But I have no difficulty in saying that after this house has declared and decided, as it did in the case of the *Bishop of London* v. *Ffytche*, I conceive myself bound to apply the principles of that decision to this case. Your lordships are bound by that decision, unless there be some special circumstances to take this case out of the principle of that." The language of Chief Baron Alexander, addressed to the House of Lords in that case, is also well worthy of citation: "To what source are we to look for what is called the unwritten law of the land, if not to the decisions of the supreme judicature; and upon what principle are you to expect that your decisions shall bind your posterity in the times that are to come, if you yourselves are not bound by what your predecessors have done in the times that are past? I take, therefore, the rules that necessarily flow from that decision to be fixed and settled."

This question was very pointedly commented on by the members of the House of Lords in *Bright* v. *Hutton*, (3 H. L. C. 341). Lord St. Leonards, L.C., stated his opinion to the House: "That although you are bound by your own decisions as much as any court would be bound, so that you could not reverse your own decision in any particular case, yet you are not bound by any rule of law which you may lay down if,

upon a subsequent occasion, you should find reason to differ from that rule, that is, that this House, like every court of justice, possesses an inherent power to correct an error into which it may have fallen." This opinion called forth the following strong remarks from Lord Campbell: "According to the impression upon my mind, a decision of this high court, in point of law, is conclusive upon the House itself, as well as upon all inferior tribunals. I consider it the constitutional mode in which the law is declared, and that after such a judgment has been pronounced, it can only be altered by an act of the Legislature. My opinion is that this House cannot decide something as law to-day, and decide differently the same thing as law to-morrow, because that would leave the inferior tribunals and the rights of the Queen's subjects in a state of uncertainty, and after there has been a solemn judgment of this House, laying down any position as law, I apprehend that that is binding upon the rights and liabilities of the Queen's subjects until it is altered by an Act of the Commons, the Lords, and the Sovereign on the throne." In the case of *Wilson* v. *Wilson* (5 H. L. C. 40), Lord St. Leonards reasserted his opinion, but in rather modified terms: "I certainly hold," said he, "that this House has the same power that every other judicial tribunal has to correct an error in subsequently applying the law to other cases." Lord Brougham, on that occasion, pronounced it to be a *questio vexata*, "how far we may or may not disregard one of our own judgments when applied to another cause?" In *Hodgson* v. *De Beauchesne* (42 M. P. C. C. 307), we find Mr. Pemberton Leigh suggesting the same question, and the only reply made was by a reference to the above dicta. Lastly, we have the very recent case of the *Attorney-General* v. *Dean of Windsor* (8 W. R. 477), in which Lord Campbell, as Lord Chancellor, repeated his former opinion in the following unmistakeable terms: "In our judicial capacity, we sit here to declare the law, and to administer it as it has been settled by prior decisions of this House. The present Master of the Rolls points out a decision of this House, which he says he thinks clearly governs the present case, adding (according to the Report, 24 Beav. 715), 'The decisions of the House of Lords are binding on me, and upon all courts, *except itself*.' I feel it my duty to say that I think this expression is incorrect. By the constitution of this United Kingdom, the House of Lords is the court of appeal in the last resort, and its decisions are authoritative and conclusive declarations of the existing state of the law, and are binding upon itself, when sitting judicially, as much as upon all inferior tribunals. The observations made by members of the House, whether law members or lay members, beyond the *ratio decidendi* which is propounded and acted upon in giving judgment, although they may be entitled to respect, are only to be followed in as far as they may be considered agreeable to sound reason and to prior authorities. But the doctrine on which the judgment of the House is founded must be universally taken for law, and can only be altered by Act of Parliament."

We venture to think that Lord Campbell, on the above occasions, has laid down the general rule correctly, and in accordance with traditional opinion; and that exceptions, if any, should be admitted only upon the most urgent and pressing necessity. To allow the decisions of our supreme courts of appeal to be lightly dealt with, would throw a shadow of uncertainty over the whole of the law. A practice of questioning and departing from their previous decisions would, we say it emphatically, raise the House of Lords above the law, and enable it to alter and enact, instead of to declare and obey.

CHANCERY STATISTICS FOR 1859.

The value of judicial statistics is most clearly perceived in regard to those courts in which questions of law greatly preponderate in number and weight over questions of fact. Issues of fact have a certain inherent life and vigour, and will not brook delay; but questions of law, intended to determine finally the rights of numerous parties not necessarily interested personally in the proceedings, have a languor peculiarly their own. Thus, while the old system of equity procedure prevailed, the immediate and effectual redress of an injury depended on its nature. If it were a legal right, justice was almost as prompt as it is now, but if it were equitable, the lawsuit threatened to become a *damnosa hereditas* to at least one generation of the posterity of the litigants. This failure of justice would not, perhaps, have occurred, if statistics prevailed in those days. Men would be startled by an array of facts, showing that expedition was a prize, which only one case in a hundred enjoyed in the court of chancery. We cannot now, indeed, complain of anything like this degree of sloth in the court of chancery, and its statistics are to be referred to chiefly to direct us in the solution of other questions besides that of delay. A Law and Equity Bill, a comprehensive reform of procedure, a cheap and effective system of taking evidence, the best stage of a suit for the summoning of a jury, the depriving judges of a discretion to remit issues of fact to courts of law, an effective and expeditious system of procedure on appeals—these and the like questions are the main topics of investigation which at present seek the light of judicial statistics, and which can be tested and determined by no other method that is equally satisfactory. It is curious that the dispute between Lord Bacon and Lord Coke has been transmitted, though not in its original virulence, down to the present time The common law commissioners advocate a fusion of law and equity; while the equity judges, on the other hand, recommend not, indeed, a pre-eminence, as Lord Bacon did, but a continuance of the present isolation of the equity jurisdiction. It is not for us to endeavour, at least at present, "*tantas componere lites.*" We do not intend in this paper to take either side in this discussion, nor is it necessary that we should do so. In Ireland it would appear that the experiment might best be made, as counsel generally practise in both classes of courts indifferently; and juries in equity have for some time been not uncommon there; while the division of learned labour in London presents a practical check to an immediate fusion that cannot be disregarded. Perhaps a gradual fusion by increasing still further the equitable powers of the common law judges, and a comparison of the comparative preference shown to the two classes of tribunals, as indicated by statistics, may best determine this question, which does not appear likely to lose its interest with the public. The concentration of the courts would, in addition to the other advantages of the change, help us to a solution of the problem. The great preponderance of questions of law and of documentary evidence that prevails in the class of equitable causes will, we think, always show, that, while there ought to be no necessary and binding distinction between the two jurisdictions, yet even if the systems be fused by Act of Parliament, a spontaneous division of labour ought to ensue; some of the judges confining their attention to questions of law, the others to issues of fact. For the tempest of Nisi Prius is certainly not calculated to induce that calm of mind necessary to a judge who is about to determine intricate legal rights. Even if a completely concurrent jurisdiction were imparted to both classes of courts at once, the statistics would soon cause the evil, if any, to be checked; as they would indicate the extent to which suitors, the best judges of the reform, availed themselves of it. Such a change would, we think, suggest a practical, and perhaps a statutory division of judicial labour, on a principle such as we have stated, which would be different from that founded upon the different nature of the rights sought to be enforced. There would be a division of the cases into those of *law* and *fact*; and not into those of a legal and an equitable nature. The niceties of ejectment would be determined by the same judges

that were daily discussing the involutions of constructive notice, while all cases of disputed facts would be determined by a different tribunal. This legal St. Simonism appears at first sight somewhat utopian, but it is the point to which all existing projects of law reform converge. Statistics, however, will render all speculations based on them more or less stable, and, as valuable facts, they cannot be cast overboard, even by those who most highly prize expedition, either in the working of the law, or in the accomplishment of their own cherished suggestions of reform.

The statistics of the Court of Chancery are stated by the report to be now for the first time issued with the present "comprehensive arrangement and detail." The returns were made by the chief officers of the several departments of the court. The chief clerks' returns comprise the proceedings which originated in the chambers of the Master of the Rolls and the vice-chancellors, the orders made thereon, the amount of debts claimed and adjudicated upon, the accounts passed, and also the amount realized by sales of estates; and are as follows:—

Summonses to originate proceedings:—

For the administration of estates	332
Under the Charitable Trusts Acts	81
For appointment of guardians and maintenance of infants	146
For other purposes	91
	650
We may mention that in 1853 this class numbered only	475
Other summonses	16,381
Referring again to 1853, this class then numbered only	6,862

Orders made:—

Of the class drawn up by the registrars	6,772
Of the class drawn up in chambers	5,770
Orders brought into chambers for prosecution (including 11 for winding up companies)	1,930

Debts claimed and adjudicated upon:—

Number of debts	4,020
Amount of debts proved	£1,288,387

Accounts passed (other than receivers' accounts):—

Number of accounts	475
Receipts therein	£1,124,306
Disbursements and allowances therein	909,803

Sales of estates under orders of court:—

Number of sales	490
Amount realized	£1,745,840

Purchases of estates under orders of court:—

Number of purchases	84

Orders for winding-up companies:—

Amount of calls made	£799,092
Total amount of fees collected by stamps	11,401

Number of contributories:—

Included in list of contributories	1937
Excluded from lists of contributories	119

These returns would be yet more useful if they showed the proportions in which the business was distributed between the judge and the chief clerk. They disclose, at all events, an immense amount of business, which, if it had been transacted clumsily, would have been long since brought before the notice of the public. The statistics should state the number of cases in which summonses for administration were found insufficient and bills became necessary, also data for comparing the relative superiority in point of time and of expense, which procedure by summons enjoys over suits instituted by bill, or claim. The figures given above, however, are abundantly sufficient to show with what ability and success the chief clerks conduct business at chambers, the best proof of which is the immense amount which they get through with but little assistance, and without giving rise to any dissatisfaction.

The proceedings in the office of the clerks of records and writs indicate more particularly the number and class of the suits before each court, which were as follows:—

Suits instituted:—

Bills or informations filed	2,083
Claims filed under general order of 1850	76
Special cases filed under Act 14 Vict. c. 35	43
Administration summonses filed	327
Other originating summonses filed	318

In suits by bill or information the number of interrogatories filed was:—

By plaintiffs	1,460
By defendants	13
The number of pleas filed was	10
" " of answers	1,884
" " of demurrers	37
" " of disclaimers	4
And of traversing notes	5

Under the head of general proceedings the number of petitions filed is returned as 2,440; of affidavits filed, 46,976. The total of the fees collected in this office was £25,905.

A word on law taxes may not be irrelevant here. It is not more irrational to tax a party injured in his property, than it would be to tax one who is assaulted, or otherwise personally injured. Nor is the want of law taxes a bounty upon litigation; for the loss of time and trouble which a lawsuit entails is a sufficient protection against wanton litigation, which yet, under any circumstances, will always require an expenditure.

The registrars' returns indicate the state of the business in each court, and consist of the following proceedings:—

	Heard during the year.
Pleas	1
Demurrers	30
Exceptions to pleadings	21
Motions for decree	720
Causes	303
Claims	51
Special cases	45
Causes, &c., further directions	667
Rehearings, and appeals	98
Appeal motions	62
Appeal petitions	21
Total	2,023

Of these classes of proceedings the number of remanets at the end of the year was 440. The chief other business in the registrar's office is returned as follows:—

Orders made on the hearing of petitions, (other than appeal motions)	2,500
Orders made on the hearing of special motions	1,265
Orders on summons drawn up by the registrars	5,679
Orders on motions, or petitions of course	523
Certificates, for sale transfer, or delivery of stock or other securities	2,925
Amount of fees collected by stamps	£12,912

The examiners have returned only two items regarding the evidence taken down by them during the year—viz., the number of witnesses, 436, and the amount of fees collected by stamps, £233.

It does not appear whether this return comprises examinations by special examiners. The report of the commissioners on evidence in chancery 1860, states, we think justly, that it is absurd that one judge should take down the evidence, and

another determine its effect. Moreover, the examiner has not power to determine the relevancy of a question, and the expense of taking down much needless evidence may be thus incurred. As equitable rights mainly depend upon documentary evidence and questions of law, the system of affidavits must be regarded as the chief means of taking evidence in chancery; but, on the other hand, when a material fact is disputed, the evidence should be *ore tenus* before the judge who is to decide the case. At present no party can compel an examination in open court; this is in the discretion of the judge, who may refuse such on application. All the commissioners concur in charging the present system of examination before the examiners with delay and expense. Yet the commissioners recommend *ex parte* examinations before examiners, the whole of which can be had more cheaply by affidavits. Lord St. Leonards disapproves the latter suggestion, but considers that the present expense of examination is owing to the appointments before the examiners not being attended punctually by the parties. He considers that Nisi Prius turmoil would disturb the quiet necessary for judges determining rights that are mainly dependent upon questions of law, and recommends the continuance of the present system in an amended form, the examiners to be informed of the precise points requiring to be proved, and to have power to regulate the appointments for the examination of witnesses. Lord St. Leonards is, doubtless, right as to the necessity of quiet in courts of chancery, but we consider with the other commissioners that the examination by a judge who is not to decide the case is an error in principle and not detail.

The returns of the Lord Chancellor's principal secretary classify the petitions for hearing as follows:—

In causes	803
Under Acts relating to railways and other public works	317
Under the Trustee Acts, 1850	227
Under the Trustee Relief Acts, 1847 and 1849	245
Under the Leases and Sales of Settled Estates Act, 1856	44
Under Acts relating to charities	19
Under Joint Stock Companies Winding-up Acts	20
Under the Infants' Settlement Act, 1855	10
Other general matters	126
Total petitions	1,811

Of these petitions the Lord Chancellor heard 26; the Lords Justices (appeals), 124; Vice-Chancellor Kindersley, 546; Vice-Chancellor Stuart, 586; and Vice-Chancellor Wood, 539. The fees collected by stamps were £1,528. Vice-Chancellor Stuart still retains a slight majority in his proportion of the causes. The number of petitions set down for hearing before the Master of the Rolls was 747, of which 378 were in causes; 24 under the Act relating to leases and sales of settled estates; 2 under Winding-up Acts; and 5 under the Infants' Settlement Act. Besides the foregoing there were 3,551 petitions, upon which orders were granted as of course. The total of fees collected by stamps was £2,199. Of this sum solicitors on admission paid £660 15*s.*, being £1 17*s.* for each of those admitted, who numbered 384. The number of deeds for enrolment was 9.

The return of the proceedings in the offices of the masters in lunacy comprise 69 orders of inquiry in the nature of commissions of lunacy; 150 reports made to the Lord Chancellor; 67 leases and other deeds settled and approved; and 3,430 summonses issued on all the proceedings. The total amount of receipts in the accounts of the committees and receivers in lunacy passed during the year was £330,149, and the amount of the disbursements and allowances therein £286,098.

The taxing master's return shows that the total number of orders and references for taxation was 3,357; of bills taxed, 7,102; and of certificates and allocations made, 2,955. The total amount of costs taxed was £794,456, and of fees levied on the suitors, 23,676. The business was equally divided amongst the seven masters.

The Accountant General's return represents the state of the accounts of the court to be as follows:—

Paid into court, cash	£8,577,896
Securities and effects	6,737,337
Paid out of court, cash	8,222,155
Securities and effects	5,962,880

The total number of accounts is 22,174; the amount of fees collected, as the rest, by means of stamps, £737 8*s.* 3*d.*

We may here state that since the Acts of 1852, the era of the real reform of the Court of Chancery, the business in court has continued nearly stationary, but that in chambers has greatly and progressively increased.

The following was the state of the suitor's fund and of the suitors' fee fund as presented in the annual account to Parliament:—

Suitors' Fund:—

	£	s.	d.
Balance of cash on 1st October, 1858	20,406	19	8
Dividends of £3,904,999 stock	114,709	2	0
Rent of master's offices let to commissioners of patents	520	0	0
Total income	£135,636	1	8
Payments	63,908	10	4
Carried over to Suitors' Fee Fund	51,825	0	6
Total payments	£115,733	10	10
Balance of cash on 1st October, 1859	19,902	10	10

Suitors Fee Fund:—

	£	s.	d.
Balance of cash on 24th November, 1858	80,010	7	3
Cash brought from Suitors' Fund	51,825	0	6
Dividends of £201,028 2*s.* 3*d.* stock purchased with surplus fees	5,905	4	0
Brokerage	4,646	1	3
Fees levied on the suitors	97,984	4	0
Total income	£240,370	17	0
Payments	156,813	3	4
Balance of cash on 24th November, 1859	83,557	13	8

The enormous sum paid for brokerage should not be overlooked. It amounts to very nearly the salary of a judge, or to the salaries of four chief clerks. This extravagant payment might easily be reduced to one fourth its amount, as we have already shown, vol. 4, p. 464. At present, all the stock ordered to be sold is actually sold, and all the stock ordered to be bought is actually bought, brokerage being, of course, paid on both transactions; while the proper way unquestionably would be to buy or sell only such amount as might be requisite to make a balance from day to day.

The following is an abstract of the returns of the above payments:—

	£	s.	d.
Compensation (including terminable salaries) in respect of abolished offices	74,396	6	3
Salaries of officers	113,655	10	4
Pensions to retired officers	10,692	16	11
Rents of offices	2,071	12	11
Expenses of copying in the office	6,199	19	11
Miscellaneous payments	13,705	7	4
	£220,721	13	8

Of this sum £63,908 10*s.* 4*d.* are charged on the Suitors' Fund, and £156,813 3*s.* 4*d.* on the Suitors' Fee Fund.

These statistics show the oppressive burdens which have been imposed by the Legislature upon the much abused Court of Chancery. If the principle of the nation paying for the blunders of Parliament should come to be recognised in the new Bankruptcy Act—by the transfer to the consolidated fund of the payment of compensations in respect of abolished offices in bankruptcy—there appears to be no reason why suitors in chancery should bear a burden from which suitors in bankruptcy shall have been relieved.

The Suitors' Fund and the Profit Fund have been at different times charged by statutes for different public objects. In 1852, the surplus income of both funds was transferred to "the Suitors' Fee Fund account." The Profit Fund is now represented by a sum of £1,291,629, which the report of the commissioners on the concentration of the courts considers may be appropriated to the building of the new courts in derogation of certain alleged rights of the suitors or their representatives, from the investment of whose cash these profits accrued. We have already attempted to show, vol. 4, p. 813, that the Accountant-General is a useless appendage to the monetary system of chancery, and that much time and an expense of £20,000 per annum would be saved if the Bank of England paid out monies in Chancery-lane to the suitors in chancery, as she does in Basinghall-street to the suitors in bankruptcy.

In the Court of the County Palatine of Lancaster, the proceedings for the past year are returned as follows:—

Number of suits and matters originated:—

By bills	76
By claim	25
By summons	16
By special case, petitions, &c.	44
	161
Number of interrogatories filed	95
„ of answers, and other defences	38

The number of causes and original matters on motions for decrees, claim, special case, or otherwise, set down during the year, was 123; heard, 115; otherwise disposed of, 7; leaving only 1 remanet. Of causes and matters on motions for further directions 1 case stood for hearing at the commencement of the year; 33 cases were set down for hearing; 33 were heard; and 1 remained for hearing at the end of the year. The total number of decrees and orders was 467, which include 166 made by the registrar.

This Court furnishes a precedent for localizing equity jurisdiction, if such a course be approved in principle, a measure which we do not mean at present to discuss. The difficulty, however, of subjecting rights not directly admitting of a pecuniary estimation to courts with a limited monetary jurisdiction, might perhaps be obviated by compelling the plaintiff in all such causes to elect to take the maximum amount of the monetary jurisdiction in lieu of his equitable right to a specific performance, &c., or have his suit dismissed.

The English Law of Domicil.

(By OLIVER STEPHEN ROUND, Esq., of Lincoln's-inn, *Barrister-at-law.*)

II.

DEFINITION OF DOMICIL.

As I have hinted in my Introduction, a definition sufficient to take in the general meaning of the word "domicil" has always been, and still is, a matter of uncertainty,

"Grammatici certant et adhuc sub judice lis est;"

and for this plain reason, that whatever definition you may give, depends upon something else; and thus you are endeavouring to describe a thing which has not and cannot be reduceable to one standard. For example, take the definition, "residence with intention to remain;" this depends upon two things extremely difficult to ascertain; namely, what is "residence," and what is "an intention to remain." At first sight this may be made a question, but let us consider it a moment, and I think it will be seen that I am correct; what is residence? it may be said to consist in a lengthened stay in one place, the purchase of a *domus* and furniture; and yet in most cases, even such a purchase as this may not be *in perpetuum*, but for a limited term only, and unless the party actually dies whilst in the enjoyment of such a fixed property, and unless that was his only fixed property of a like nature, it might be questionable how far a domicil had been created. This, of course, is putting an extreme case, but it is necessary that a general definition should take in every case, and such a case as is here suggested has actually happened, in which commissions were issued to three several countries to examine witnesses, to show, if possible, which of many alleged domicils, standing apparently on precisely the same footing, should prevail.* Then comes the much more *vexata questio*, what is "an intention to remain," and this being the "*animus*," and not the "*factum*," is a matter entirely of evidence and deduction, and must vary in almost every case. It therefore really comes to this, that you can give nothing but a dependant definition, the fact being that a domicil is that which subjects a man's property to be dealt with according to the particular law of a particular country in which the domicil has been acquired; if Scotch, according to the law of Scotland; if English, according to the law of England; if French, according to the law of France, &c. It may be said again, that if a man resides or many years in a particular place, settling there for good reasons, and there remaining until his death, "what question can there be as to his domicil?" the answer is, there is none; but such a case never comes under the consideration of a court of justice, any more than a man of perfectly upright conduct ever comes within the clutch of the criminal law, as it is only on real questions of uncertainty that any point arises; for "De minimis non curat lex." However, our law has endeavoured to give several definitions of this fickle thing, and we also find attempts made with a like object by foreign authors. Thus, according to the Roman law, a domicil, *domicilium*, translated usually "a habitation," is, "in whatever place an individual has set up his household gods, and made the chief seat of his affairs, without any special avocation." The word "home" is perhaps the shortest as well as the truest definition, but that still leaves the question open as to what is a man's "home." The French jurists define it to be "the moral relation that subsists between a man and the place of his residence," and Vattel using the word "domicile," translated by the word "settlement," says, "it is a place where a man has the intention to remain always." Boullenois says, "it is a place of society where he may enjoy the advantages of his labours;" and the American definition, where the word is actually used, is "residence at a particular place accompanied with proof or presumptive proof of intention to remain there for an unlimited time." There must be the intention and the fact. As I have before cursorily observed the word "domicil" is of modern introduction into our language, not being found in dictionaries published as far back as Johnson's, but in Todd's edition he inserts it, and writes it "domicile" with an *e*, and quotes it from an old book called "Brevint's Saul and Samuel at Endor," p. 303, where there is this passage, "This famous *domicile* was

* The case alluded to is *Lord* v. *Colvin*, 7 W. R. 251, where the evidence being pretty equally balanced, the domicil of origin was held to prevail.

brought with their appurtenances in one night from Nazareth over seas and lands by mighty angels, and can, if honoured with a visit, with an offering, and with a vow, cure in a moment all diseases" Todd's edition was published in 1827, but in an earlier work by Mason (1801), entitled an *Addendum* to Johnson's Large English Dictionary, the word "domiciliary" occurs, which he renders as adj., from *domicile*, French, "intruding into private houses;" and says in a bracket, "this word is a new offspring of the French Tyrrany," which Todd refers to, but seems to plume himself upon having discovered so erudite an authority as Brevint for the use of the word "domicile," which was, in fact, the first use of the French word in an English composition, and Brevint was not an Englishman, but a native of Jersey, although he graduated at Oxford, and was afterwards Dean of Lincoln, and therefore, allowing all honour due to Mr. Todd's industry, this I look upon as an accidental use of it, more particularly as the natives of Jersey speak French, and that it did not obtain till the year 1830 at the earliest in common use, except in America, and not then common), for in 1827 he was put to the necessity of searching for it in such a recondite authority. He admits, moreover, that it was not to be found in our "lexicography," and says, "Burke uses the Latin word as if he had not known the English." Vattel, in his Law of Nations, treats of the subject of "settlement" in precisely the same manner as "domicil" is now treated of at p. 103 of his work, and as the French word "*domicile*" was translated "settlement," hence we may infer, that although the word itself was not used at that time in England (the middle of the eighteenth century when he wrote); yet the subject was then discussed among jurists, although it had not monopolized so much attention as since. We, however, find the word used as an English, or at all events as a Scotch word in the Dictionary of Decisions for 1813, Lord Eldon's notes, p. 199.

In Littleton's Latin Dictionary, he translates it thus, "domicilium," domicolium, οἰκητηριον ἐναυλισμα, "a mansion, a dwelling house, an abood;" *Sedes*, Cicero. The word "mansion" certainly signifies a *fixed* residence, for although it may be let, yet it is usually something belonging to "the family," and likely to be retained as a residence. The next word, "dwelling-house," might be any house, so might the word "abode;" but the word "sedes," as used by Cicero, probably referred to the villa residences in the vicinity of Rome, that is, a place of retirement, or what we, probably from the same word, call a "seat," and there is no doubt that a "country seat" usually answers the description of a domicil. In the Rev. J. G. Wood's very pretty little work entitled "The Common Objects of the Sea Shore," the following passage occurs at p. 115, showing plainly in what sense the word "domicil" is taken by a scholar who is *not* a lawyer. "These creatures (soft-tailed crabs) are generally called hermit crabs, because each one lives a solitary life in his own habitation, like Diogenes in his tub . . . . The species here given is the common hermit crab (Pagurus Bernhardus), and the particular individual is inhabiting a whelk shell, a *domicile*, that is in great request when the creature grows to any size." It should be observed, in reference to this passage, that the creatures in question make the shells of deceased univalves their *home* as long as they answer their purpose, and therefore the word "domicile" is used by Mr. Wood in the sense of "home," which these shells undoubtedly are to the crabs. The word "*domicilium*" is used by *Grotius*, lib. ii. cap. 5, s. 24, where there is this passage: "Romanis legibus saltem posterioribus *domicilium* quidem transferre licebat." The Roman law here referred to is as follows:—"Municipes sunt liberti et in eo loco ubi 'ipse' *domicilium* suâ voluntate tulerunt, nec aliquod ex hoc origini patroni faciunt præjudicium et utrobique numeribus astringuntur." Digest, lib. i. tit. 1. "Ad municipalem et de incolis." Leg. xxii. § 2. In the translation of *Grotius* by Mr. J. Barbeyrac, in 1788, the word "*domicilium* is translated "habitation."

In the case of *Forbes* v. *Forbes*, 1 Kay. 341, *Vice-Chancellor Wood* observed how very unsatisfactory any general definition must be, because the very terms of it implied something else, which was to be defined; and Dr. Lushington, in a very late case came to the same conclusion; but whether we can exactly agree upon a set of words to express it or not, appears to me not to be very material, if we understand the requisite things to be proved to constitute it, the real question being, whether or not a person has by his acts and expressions placed himself in such a position as that, if he dies, the law of the country in which he then is, can be made applicable to whatever personal property (for to such only it applies) he leaves behind him; and I have rather considered this point with reference to the opinions expressed upon it, than to its materiality.

By the statutes of the state of Massachusetts of 1692, 1701, and 1767, domicil is defined to be "coming to sojourn or dwell," "being an inhabitant," "residing and continuing one's residence," "coming to reside and dwell." In the case of *The Inhabitants of Abington* v. *The Inhabitants of Bridgwater*, 23 Pickering's American Reports, 170, the above statutes are quoted, and the following pertinent observations made upon the subject. "The question of domicil is often of the highest importance to a person, to determine his civil and political rights and privileges, duties and obligations, it fixes his allegiance, it determines his belligerent and neutral character, and in time of war it regulates his personal and social relations whilst he lives, and furnishes the rule for the disposal of his property when he dies. Yet as a question of fact, it is often one of great difficulty depending sometimes upon minute shades of distinction which can hardly be defined, and it seems difficult to form any *exact definition* of domicil, because it does not depend upon any single fact or precise combination of circumstances. If the above definition be adopted (referring to the statutes), which seems intended to explain the matter, and put it beyond doubt, it will be found on examination to be only an identical proposition equivalent to declaring that a man shall be an inhabitant where he inhabits, and be considered as dwelling or having his home, where he dwells and has his home. It must often depend upon the circumstances of each case, the combinations o which are infinite. If it be said to be fixed by the place of his dwelling-house, he may have his dwelling-house in different places, if it be where his family reside with himself, he may occupy them indiscriminately, and reside as much in one as another, if it be where he lodges or sleeps (*per noctat*), he may lodge as much at one as the other. If it be his place of business, he may have a warehouse, manufactory, wharf, or other place of business in connection with his dwelling-house, in different towns." This extract will be sufficient to show how the mere question of definition stands; and although the observations are made in America by an American judge, they still apply equally to the general subject.

Before leaving this part of the question, which is in truth of considerable significance, I would refer to some observations made by Vattel at page 101 of his treatise, which are valuable not only by analogy, but to a great extent by direct application. "The whole of the country, possessed by a nation and subject to its laws, forms a part of its territory, and is the common country of all the individuals of the nation." We have been obliged to anticipate the definition of the term "native country" because our subject led us to treat of the love of our country. . . . Supposing then, this definition already known, it remains to explain several things that have relation to this subject, that answer the questions that naturally arise upon it (*vide Vattel*, p. 63, s

122). The term "country" seems to be pretty generally known, but as it is taken in different senses, it may not be unuseful to give it here an exact definition. It commonly signifies "*the state of which one is a member;*" in this sense we have used it in the preceding sections, and it is to be thus introduced into the law of nations. In a more confined sense, and more agreeably to its etymology, this term signifies *the state* (or even more particularly), *the town or place where our parents have their fixed residence at the moment of our birth;*" in this sense it is justly said that our country cannot be changed, and always remains the same to whatever place we may afterwards remove; . . . . but as many lawful reasons may oblige a man to choose another country, that is, to become a member of another society; so, when we speak in general of this duty to our country, the term is to be understood as meaning "*the state of which a man is an actual member;* since it is the latter in preference to every other state that he is bound to serve with his utmost efforts. At p. 102, s. 215, he proceeds: "It is asked whether the children born of a citizen in foreign countries, are citizens? The law has decided that question in several countries, and those regulations must be followed. By the law of nature alone children follow the condition of their fathers, and enter into all their rights. The place of birth produces no change in this particular, and cannot, of itself, furnish any reason for taking from a child what nature has given him. I say, of itself; for civil and political laws may, for particular reasons, ordain otherwise, but I suppose that the father has not entirely quitted his country in order to settle elsewhere. If he has fixed his *abode* in a foreign country, he has become a member of another society, at least as a *perpetual inhabitant*, and his children will be members of it also." (I give this from the English translation for greater convenience.) I have written in *italics* those portions of the above quotation which more directly bear upon my subject, and I think it is very clear that the subject now called by the word "domicil" entered very largely under the title of "settlement" (the French word "domicile" being so translated) into the consideration of the law of nations at the time Vattel wrote, and those expressions which I have so particularised, apply very specially to it, as at present treated of and understood, besides referring to other portions of the same subject. In considering any subject, it is of the last consequence that we should understand fully *what* it is we are going to consider, and hence, anything tending to elucidate the definition has its use.

(*To be continued.*)

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF QUEEN'S BENCH, GUILDHALL.

Dec. 18.—In the course of the trial of a cause of *Hooper* v. *Warde*, the Lord Chief Justice complained of the bad regulations for keeping order in this court, and said that if the other courts at Guildhall were like it, they were a disgrace to the city. The accommodation for junior counsel is limited to one row of seats, with desks to write upon, and although there are two benches behind without any writing accommodation whatever, the seats are usually allowed to be filled by curious spectators. Ingress and egress during important trials require great strength and perseverance, and the noise in the galleries, where there are no police, drowns the voices of judge, barristers, and witnesses.

COURT OF EXCHEQUER.

(Sittings at Nisi Prius, at Guildhall, before the LORD CHIEF BARON and a special jury.)

Dec. 14.—*Druce* v. *Pickering.*—The plaintiff, who is practising in the city of Oxford as an attorney, brought this action against the defendant, a railway contractor, to recover damages for wrongfully causing the plaintiff to be arrested and imprisoned. The defendant pleaded a justification of the arrest on the ground that he had intrusted the plaintiff with certain promissory notes to be discounted, and with directions that the proceeds should be applied to a specified purpose, and that the defendant unlawfully applied the money to his own use. Before the termination of the plaintiff's examination, however, the defendant withdrew his pleas of justification, and expressed his extreme regret for having made the charges against the plaintiff. The plaintiff, who had brought the action solely with a view to clear his character and prove the untruth of the defendant's charges, thereupon consented to take a verdict for 40*s.* without costs, which was accordingly done.

The LORD CHIEF BARON expressed his entire satisfaction at the course which had been adopted.

Druce v. *Bricknell.*—This was an action of slander, arising out of the matter complained of in the case above, and was brought to recover damages from the defendant, the vicar of Eynsham, for having stated that he had heard that the plaintiff had been arrested for forgery. The defendant having denied that he had ever intended to slander the plaintiff, the plaintiff consented that the case should terminate by the withdrawal of a juror, which was done.

COURT FOR DIVORCE AND MATRIMONIAL CAUSES.

BUSINESS OF THE COURT.

Dec. 18.—This was the last day of the sittings for divorce business before Christmas. During the 10 days of the sitting 16 causes have been tried, and 13 decrees have been granted. In one case a decree has been suspended, and in two cases time has been taken for consideration. In 14 cases the petitions were by husbands.

WINTER ASSIZES.

YORK.

(Before Mr. Justice HILL.)

Dec 15.—The grand jury having got through all the bills preferred, the foreman, Col. J. Smyth, addressed his lordship, and said—"We desire to hand in to your lordship a memorial in regard to what we consider to be the inadequate remuneration of witnesses." His lordship said he would take care that it was forwarded to the proper authorities.

The following is a copy of the memorial which was presented:—

"The grand jury of the county of York, at the winter gaol delivery in December, 1860, desire most respectfully to call the attention of the Hon. Mr. Justice Hill to the scale of allowances to prosecutors and witnesses in criminal cases at assizes and quarter sessions, as being quite insufficient adequately to remunerate those in the humbler walks of life who are necessarily called away from their families and their ordinary occupations, for their expenses and loss of time, by which last expression the grand jury understand the statutes 7th George 4, cap. 64, s. 22, and 14th & 15th Victoria, cap. 45, to mean the reasonable allowance for the loss of their wages during the time such witnesses are necessarily absent from their homes and their work. Those of the grand jury who are acting justices are not unfrequently very much embarrassed by the extreme reluctance of material witnesses to come forward to prosecute and give evidence in criminal cases of the gravest kind, as well as in all other cases likely to be sent for trial at assizes and quarter sessions within their jurisdiction, by reason of the loss of wages they thereby sustain, and the consequent privation to which their families are subjected. Necessary witnesses not unfrequently declare that, from their experience in former cases, they are reluctant, and even decline, again to come forward as witnesses. The grand jury are of opinion that justice is greatly impeded, and in many cases defeated, by the inadequate remuneration awarded under the present scale of allowances, and, from their observation and experience, they fear this is an increasing evil.

"J. G. SMYTH, Foreman."

CROWN COURT.

(Before Mr. Justice KEATING.)

Dec. 15.—At the sitting of the court this morning the jury who had heard the case of a letter carrier, and who had been enclosed all night in consequence of their not having agreed to

their verdict, were again brought into court. The Clerk of the Crown having asked them if they had agreed upon their verdict, the Foreman stated they had not. The Judge: Gentlemen, is there any probability of your agreeing? The Foreman: I am not aware that there is the slightest probability of our agreeing. We have argued the question over and over again; and there does not appear to be the slightest probability of our agreeing. A Juryman: If we should be kept for a month we should not agree. The Judge: I think you have been detained sufficiently long to ascertain the improbability of your agreeing. Under these circumstances I shall discharge you from giving your verdict. Let the prisoner be remanded.

CENTRAL CRIMINAL COURT

Dec. 16.—The December sessions of the above Court was opened before the Right Hon. W. Cubitt, M.P., Lord Mayor; Mr. Russell Gurney, Q.C., Recorder; Aldermen Sir R. W. Carden, Rose, and Lawrence; Mr. Alderman and Sheriff Abbiss, Mr. Sheriff Lusk, Mr. Under-Sheriff Eagleton, and Mr. Under-Sheriff Gammon.

The calendar was lighter than usual.

MIDDLESEX SESSIONS.

Dec. 17.—The December adjourned general sessions commenced this morning at the Guildhall, Broad Sanctuary, Westminster, before Mr. Bodkin, Assistant-Judge, Mr. Payne, Deputy, and several magistrates.

The calendar was very heavy.

The revising barristership of the city of London has become vacant by the death of Mr. T. Y. M'Christie.

The Queen has been pleased to appoint Stewart Campbell, Esq., to be one of her Majesty's counsel for the province of Nova Scotia.

Recent Decisions.

[*Equity*, by J. Napier Higgins, Esq., *Barrister-at-Law*; *Common Law*, by James Stephen, Esq., LL.D., *Barrister-at-Law*.]

EQUITY.

Undue Influence—Parent and Child—Setting aside Family Settlement.

Jenner v. *Jenner*, L. C., 9 W. R. 109.

The doctrine of undue influence, arising out of the relation of parties, has been of late discussed by the courts with unusual frequency; and there can hardly be said to be any question left open as to what the doctrine really is. It has been so fully laid down in the modern case of *Baker* v. *Bradley*, 7 D. M. & G. 579, and in *Savery* v. *King*, H. Lds., 4 W. R. 571, that it is unnecessary to state it here. In the latter case, which, in some respects, was not very unlike the present, the bill having there been filed by one who being a tenant in tail, in the lifetime of his father, had charged his inheritance partially for the benefit of the father, considerable stress was laid upon the fact that the son, who, at the time of the transaction, had only recently come of age, had not the advantage of independent professional advice, the incumbrancer himself being a solicitor, which was no doubt another important element in the case. In the present case also no solicitor had been employed to act independently on behalf of the son, the tenant in tail, which, it was argued, was sufficient of itself for the impeachment of the transaction. The Lord Chancellor, however, was of opinion that this circumstance of itself was not sufficient; and that, although the father's solicitor prepared the deeds, yet inasmuch as there was evidence to show that the son was well acquainted with and advised of the effect of the provisions of the deeds before they were executed by him—the transaction, moreover, being reasonable and for the good of the family, and not being for the personal benefit of the father—it was one which the Court would affirm. The following dictum of Lord Justice Turner in *Baker* v. *Bradley*, 7 D. M. & G. 620, may be taken as the most intelligible expression of the general rule of the Court affecting such transactions:—"Transactions," said his lordship, "between parent and child may proceed upon arrangements between them for the settlement of property, or of their rights in property, in which they are interested, In such cases this Court regards the transactions with favour. It does not minutely weigh the considerations on one side or the other. Even ignorance of rights, if equal on both sides, may not avail to impeach the transaction. On the other hand, the transaction may be one of bounty from the child to the parent soon after the child has attained twenty-one. In such cases this Court views the transaction with jealousy, and anxiously interposes its protection to guard the child from the exercise of parental influence."

Practice—Interrogatories.

Marsh v. *Keith*, V. C. K., 9, W. R. 115.

The practice was well understood, and very much in vogue amongst equity draftsmen, before the modern Chancery Amendment Acts, of inserting in bills a certain class of averments for the mere purpose of founding interrogatories upon them; and the model bill appended to the orders of 1852 allowed it to remain in doubt whether such averments should be continued, although there could be no doubt that they were opposed to the spirit of the Act and the whole tenor of the new practice. Amongst other points raised in the above case, the point we have mentioned was for the first time definitively settled. Vice-Chancellor Kindersley was of opinion that the paragraph in the model bill above alluded to was inserted *per incuriam*; and that under the new practice nothing more was required in the bill than the allegation of whatever substantially constitutes the plaintiff's case. It must be borne in mind, however, that these remarks only point to the abolition of those fictional averments which were formerly so common, but which are now of rare occurrence in Chancery proceedings; and the effect of his Honour's observations is merely that the right of the plaintiff not is restricted by such omissions.

COMMON LAW.

Parent and Child—Right to Custody—Habeas Corpus

Ex parte Barford, 9 W. R., Q. B., 99.

The power of a parent over his child (says Blackstone) "is moderate, but still sufficient to keep the child in order and obedience." Of the latter branch of this proposition the present case is an apt illustration; for by it the right of the father to the custody or control of his child's person, until the *age of discretion*, is completely confirmed, as well as his right to regain its possession by writ of *habeas corpus* if the child below this age be taken or detained from his natural or legal guardian. It is, however, also laid down by Blackstone (1 Com. p. 461), that this right continues until the age of twenty-one. But this does not seem to be law, taken to its full extent. For the courts will not interfere summarily by *habeas corpus* to take a child out of the custody in which it may happen to be, provided it has arrived at an age to exercise a discretion in the matter. The question therefore is, what is the age of discretion for this purpose? and with regard to this, the present case lays down this general and important rule, viz., that *mental* precocity is no test whatever. And the Court, in laying down this doctrine, added that they had arrived at the conclusion that the age of *sixteen* is the age under which a minor is unfit to choose for her (or him) self, in whose custody she (or he) will be. And that this limit has only been fixed by them after great and deliberate consideration and after consultation with all the judges.

It may be observed that the Courts of Common Law will not assist a parent, by *habeas corpus* or otherwise, in regaining the possession of his child if it be shown that he is unfit to have it by reason either of cruelty or immorality. And where an infant, of whatever age, is possessed of property so as to fall within the jurisdiction of the Court of Chancery, that Court will always interfere to protect it against a guardian (even though he be also the parent) whose conduct renders him grossly unfit for the office. (See for example, *Shelly* v. *Westbrook*, Jac. 266; *Wellesley* v. *Wellesley*, 2 Bligh., N. S., 124.)

Attorney and Client—Retainer—Municipal Corporation.

Lewis v. *Mayor and Corporation of Rochester*, 9 W. R., C. B., 100.

The most general point of interest arising in the present case, is with regard to the authority of the mayor of a borough to retain the services of an attorney at the expense of the corporation, against the will of the *minority* of the town council. The mayor in question (together with the borough assessors) had been proceeded against in the Queen's Bench (see 7 Ell. &

Bl. 910), for omitting to revise the burgess list as by law required to do, and it was in reference to these proceedings that the retainer of the plaintiff in the present action had been given.

The Court of Common Pleas were unanimous in thinking that the mayor had a right to defend these proceedings in the Queen's Bench at the expense of the borough—and this even assuming he had made through ignorance, "a very remarkable mistake" in omitting properly to revise the burgess list. For they considered that he was justified in obtaining the opinion of that Court as to the mode in which he could best rectify his error, and even carry up the proceedings to a court of error if supported by sound legal advice that such was his proper course.

DAMAGES, MEASURE OF—COUNTY COURT APPEAL, COSTS OF.

Gee v. *Lancashire and Yorkshire Railway Company*, 9 W. R., Exch., 103.

The first point in this case is upon the question of the proper measure of damages. In actions of contract this is now (in the greater number of instances) governed by the rule laid down by the Court of Exchequer in the well known case of *Hadley* v. *Bazendale* (9 Exch. 341), which established the proposition that the breaker of a contract was not liable to the other party for damage which the parties at the time of entering into the contract, could not have reasonably expected would probably result from the contract being broken. Accordingly in that case (which was an action against a carrier) the plaintiff was held not to be entitled to recover the *profits* which he might have made during the period of delay by a certain implement unreasonably delayed in its transit. And so also in the present case (which was an action of the same kind), it was held a misdirection to tell a jury that they might take into their consideration not only the wages which the plaintiff had had to pay his workmen during such period of unreasonable delay, and while he was daily expecting the arrival at his mill of certain cotton which had been consigned to him, and sent through the defendants; but also the *profits* he would have made by working such cotton if it had arrived in time—he having at his mill no other stock of cotton to proceed with, a fact of which the defendants had no notice.

The other point in this case is with regard to the costs of an appeal from a county court. The Court gave judgment for the appellants, and it was contended that in all such cases the costs of the appeal were granted. But the Court said that in the superior courts, if a new trial was granted on the ground of misdirection, no costs were given, and that the same rule must be followed in appeals from the county courts.

ACTION OF SLANDER, COSTS IN—DAMAGES UNDER 40*s*.

Evans v. *Rees*, 9 W. R., C. P., 73.

This was an action for slander, in which the plaintiff recovered only one shilling as damages; but in which the judge who presided at the trial certified, under 3 & 4 Vict. c. 24, that the slander was "wilful and malicious." Relying on this certificate, the Master allowed the plaintiff the usual costs of the action; but the Court ordered his taxation to be reviewed on the ground that there was still existing a statutory enactment prior to the 3 & 4 Vict. c. 24 (viz. 21 Jac. 1, c. 16, s. 6), which, in actions for *slanderous words*, made the costs of the plaintiff to equal only the damages assessed by the jury, in cases where such damages fell below 40*s*. (As to this statute being still in force, see also Lush Pr. 2nd ed., p. 689.)

It may be observed that a case such as the present does not seem to be affected by the new provision, with regard to the costs of frivolous actions, in the Common Law Procedure Act of the present year. For while that provision does not allude in any way to any previous Act on the subject, it operates only to deprive the plaintiff of costs, where the defendant obtains a certificate that (in an action of slander) the grievance in respect of which the action was brought, was not wilful and malicious, or that the action was not fit to be brought; whereas, in the present case, the judge, on the application of the plaintiff, certified just the other way. It may be added, however, that the present case shows this—namely, that though the plaintiff would not be *deprived* in the present case of his costs, by 23 & 24 Vict. c. 126, s. 34, he would, notwithstanding that provision, be unable to claim more costs than damages, under the statute of James.

Correspondence.

LODGING HOUSE KEEPERS—NON-LIABILITY FOR LOSS OF LODGERS' GOODS.

The recent case of *Holder* v. *Soulby*, 8 W. R. 438, and 29 L. J. N. S. C. P. 246, decides that a lodging house keeper is not liable for the loss of the lodgers' goods. *Calye's case*, 1 Smith's L. C. 47, is referred to in which the responsibility of an innkeeper is confined to the goods of passengers and wayfaringmen; and Erle, C. J., says the reason why the law makes an innkeeper liable is that a wayfarer has no means of knowing the character of those with whom he may come in contact at the inn.

I submit that this reason applies with as much force to a lodger as to a wayfarer, and that if an innkeeper is bound to receive a wayfarer, and to answer for the character of those with whom he may come in contact, much more should a lodging house keeper, who is under no obligation to receive a lodger, answer for the character of those with whom the lodger may come in contact. Taking the law to be as laid down, it follows that when A. and his family are located in lodgings at the sea side, if they venture out for a walk, drive, or dip, they must, to avoid loss, "carry their baggage with them."

C.

COMMISSIONER TO ADMINISTER OATHS.

Is it a matter of obligation or not on a commissioner to administer oaths either in the common law or equity courts, to swear a party to an affidavit, &c., who brings it properly prepared, and is ready to pay him the usual fee for the oath?—in other words, has a commissioner a right to swear whom he pleases?—or is he, as an officer of the particular court, bound to administer the oath to all who come to him in due form? Perhaps some correspondent can answer the question and give authorities.

Bristol, 17th Dec. A COMMISSIONER, &c.

THE LAW OF JUDGMENTS.

I cannot help giving my meed of praise, although it is quite superfluous, to Mr. Johnson's very able paper on the Law of Judgments, published in your Journal of the 10th ult. In the summary at the conclusion of the essay, he says:—"If it is right so severely to restrict judgment claims, as is done by the late Act, it is equally right and *incomparably more convenient* to relieve purchasers and mortgagees altogether from them." Most persons, I think, will agree with the above proposition; and for myself I have often thought that it would be a consummation much to be wished, to abolish judgment charges altogether on landed property. It would be a great boon so far as professional men are concerned, who take the responsibility on their own shoulders of not searching for incumbrances where they think there is no risk, in order to save their clients expense, and many have often had to suffer from the consequences of this consideration for their clients' pockets and their good nature.

Now, I cannot comprehend on what principle the law should fetter land with charges and incumbrances, and not other descriptions of property. Lands and houses certainly are the most tangible and permanent species of property, although not always the most valuable of a man's possessions; but I do not see that that circumstance should subject them alone to incumbrance claims. Houses and lands are not so easily disposed of as other property; and the very fact of the notoriety that attends the ownership operates as an argument rather against than for their being charged with incumbrances.

The argument that charges on property act as a check upon dishonest debtors, does not touch our present question, namely "Why one species of property should be preferred to another, but assuming this argument to apply to every kind of property, it does not always operate as a check, inasmuch as searches are not always made, much dependence being placed upon a man's position, rank, and character; and in those cases where a purchaser is deceived, the real Simon Pure perhaps escapes altogether in consequence of poverty, dishonesty, or being *non est* when wanted, whilst the unsuspecting purchaser is fleeced, and pays for all. Many persons will start up and say, "Serve him right, he ought to be more careful, he had the means of searching, and he must take the consequences of his neglect." Now no one denies these assertions so far as the lawyer is concerned, therefore there is no occasion to make them; but as to the purchaser, the poor man remains probably in blissful ignorance till they come down on his lands; and then what will the unsophis-

ticated say of the morality and honesty of the scheme that thus robs Peter to pay Paul?

I believe the great bulk of land-holders are not judgment debtors, and that that class is a very small minority; and if my assumption is correct (and I think it will not be denied when we reflect how seldom judgments are discovered in cases where searches are deemed necessary to be made), does it not follow as a consequence from the fact of searching being a useless proceeding, that it operates as a grievous burden upon landed property, on purchasers, and more especially on mortgagors, whose pressing necessities often compel them to borrow on security of their estates?

If there were no other reason against registering charges on land than the last I have mentioned, I think it sufficient for abolishing their claims; and as Mr. Johnson states that Lord St. Leonards' Act has reduced them to a shadow, I think that a still better argument for dispensing with them altogether.

I should be glad to have your opinion on the question, as I think it is one deserving of consideration by the members of the profession.

W. R. H., Liverpool.

The Provinces.

Birmingham.—The annual dinner of the Liverpool Law Society was held in the large room of the Adelphi Hotel in this town on Saturday evening, the 15th inst. Between eighty and ninety gentlemen being present. Mr. Dodge, president of the society, occupied the chair. Mr. Radcliffe and Mr. Ambrose Lace occupied the vice-chairs. Mr. T. S. Raffles, stipendiary magistrate, Mr. John Laird, and Mr. Winstanley, were among those present. In the course of the evening the following (among other toasts) were enthusiastically received. "The common law and chancery bar," which was proposed by Mr. Alderman J. B. Lloyd, and responded to by Mr. Winstanley; and "The Manchester Law Society," which was proposed by Mr. Radcliffe, and responded to by Mr. Baker.

Bristol.—*Dec.* 12.—*Re Thomas Rennie Hutton*, late official assignee of the Bristol Bankruptcy Court.—The audit account of the moneys recovered from the sureties of Mr. Hutton, and the payments thereout incurred in the investigation of the various estates, law charges, &c., was passed to-day, and showed a balance of £6009 19*s.* 4*d.* in the hands of the accountant in bankruptcy, subject to the order of the Court for division among the various estates. It will be recollected that the deficiencies, as ascertained by the late Mr. P. R. Power, amounted to £12,096 6*s.* 1*d.*

Leicester.—*Leicester Law Society.*—A meeting of the solicitors of Leicester was held on the 27th ult., Mr. Richard Toller (clerk of the peace for the borough) in the chair, when resolutions approving of the formation of a Law Society were passed unanimously, and a committee was appointed to consider the rules. An adjourned meeting was held on the 13th instant, Mr. Richard Toller in the chair, and the rules of the society and the report of the committee were read. The committee reported that they had framed the rules of the society on the basis of those of the Liverpool Law Society, and after referring to several matters of detail relating to the finances and library, the committee concluded their report by expressing their satisfaction that the society would number amongst its members nearly all the solicitors in the town, and by congratulating the profession both in the town and county upon the formation of a society which would seek to elevate the character of the profession and to promote confidence, good feeling, and honourable practice amongst its members. On the motion of Mr. Berridge, seconded by Mr. Luck, a resolution proposing the immediate formation of the society was carried unanimously, and on the motion of Mr. Stone (town clerk) seconded by Mr. George Toller, the rules of the society and the report of the committee were adopted unanimously. Mr. Harris was appointed President—Mr. Stone, Vice-President—Mr. Ingram, Treasurer—and Mr. Bouskell, Secretary for the ensuing year. The managing committee was afterwards appointed, and the proceedings terminated with a vote of thanks to the chairman and to the preliminary committee and secretary.

Newcastle.—The 34th annual meeting of the Newcastle and Gateshead Law Society was held on Wednesday, the 12th inst. when the following gentlemen were elected officers for the ensuing year:—Mr. H. W. Fenwick, president; Mr. Geo. Armstrong, vice president; Mr. R. R. Dees, treasurer; Messrs. Wm. Crighton and James Radford, secretaries. The standing committee were re-elected, with the addition of Mr. J. A. Bush, Messrs. Robert Spence Watson, Thomas Swinburne, Edward Leadbitter, and W. B Mortimer, were elected members. The annual dinner was afterwards held at the Queen's Head in Newcastle, Mr. G. W. Hodge (vice-president), in the absence of Mr. Clayton, the Town Clerk (the president), in the chair; Mr. Crighton taking the vice-chair.

Rochdale.—In a recent case at the Rochdale County Court, before Mr. Temple, the judge declined to receive the evidence of a witness for the plaintiff, who stated that she did not believe in a future state of rewards and punishments, in any responsibility for telling a lie, or in a God; and nonsuited the plaintiff with costs.

Foreign Tribunals and Jurisprudence.

(From the *Gazette des Tribunaux*, by William Hackett, Esq., Barrister-at-Law.

COUR IMPERIALE DE PARIS.

Les Noces de Figaro—Rights of Authors.

It is legal for the Committee of the Society of Dramatic Authors to stipulate with the directors of theatres for fixing the rights of the associated authors, and the latter cannot by particular agreements modify the treaties thus entered into, to the prejudice of the society.

The celebrated work of Beaumarchais (*Le Barbier de Séville*) was recently discussed in the *Cour Imperiale* of Paris, in a suit between M. Jules Barbier, and the Society of Dramatic Authors and Composers. M. Barbier and M. Carré had been intrusted by M. Carvalho, the director of the Théatre-Lyrique, with the task of adapting the play of *Les Noces de Figaro* to the music of Mozart, on the usual terms of remuneration, that is to say 6 per cent. on the receipts. In May 1858, the first representation of the opera took place, and obtained a complete success; but unhappily a dispute arose as to the quantum of remuneration to be received by the authors. A claim was made on behalf of the heirs of Beaumarchais for a moiety of the receipts payable to the author. M. Barbier conceiving that his work had the merit of originality, and that the Committee of the Society of Dramatic Authors were not justified in depriving him of the fruits of his labours, resisted the claim and commenced an action for the recovery of his demand. The cause turned on the effect of a treaty entered into by the Committee of the Society of Dramatic Authors, with the director of the Théatre Lyrique.

By the French law, the heirs of dramatic authors are only entitled to thirty years' enjoyment of their rights, reckoning from the time of the death of these authors, and the death of their widows; after this period the works become part of what is called the public domain, that is to say, they may be represented by the directors of theatres without paying any per centage on the receipts. The Society of Dramatic Authors and Composers is a society established for the protection of the rights of the members, and for that purpose it from time to time enters into agreements with the directors of the different theatres, providing for the terms upon which the productions of dramatic authors and composers are to be represented. This society, conceiving that the provisions of the existing law were inequitable as regards the heirs of dramatic authors, some time since entered into an agreement with M. Carvalho, the director of the Théatre-Lyrique, by which it was determined that every time any work entitled of the public domain should be represented, the representatives of deceased authors should receive a sum equal to what would be allotted to these works if they were the works of living authors. It was also stipulated by this agreement that wherever the works of deceased authors were altered for modern representation, in such cases the per centage payable in respect of the works so altered should be divided equally between the representatives of the deceased author, and the person or persons employed in altering or adapting the original work for the stage.

M. Barbier, in support of his claim, maintained that although the plot of the work which caused the litigation "*Les Noces de Figaro*," was taken from the celebrated work of Beaumarchais, yet that in fact and really it had every claim to be considered as an original work: that this being so, the committee of the Society of Authors had exceeded their powers by making an agreement which would have the effect of depriving an author of the just reward of his industry. The Court, however, was

of opinion that it was quite competent for the Committee of the Society of Authors to make such a stipulation as that which was called in question by M. Barbier; that the society was instituted for the purpose of protecting the rights of dramatic authors generally, and that no individual could be permitted, on the ground of personal loss, to break through an agreement which undoubtedly was for the benefit of the community of authors: accordingly the suit of M. Barbier was dismissed with costs.

An English gentleman named Grant recently brought before the Civil Tribunal an action against a tailor named Ville to recover 1,000f. as damages for a vexatious arrest. From what was stated it appeared that Mr. Grant had been a customer of the tailor for about two years, and paid him regularly. Some time back a dispute arose as to a garment which did not fit him, and which he refused to receive; an angry altercation ensued, and the Englishman turned the tailor out of doors. The tailor, on the representation that Mr. Grant was a foreigner, lived in an hotel, and might leave the country, obtained from the President of the Civil Tribunal an order for his arrest for the value of the garment. Mr. Grant was taken into custody, but immediately paid the sum claimed, and was released. The Tribunal declared that the arrest was "a measure of excessive rigour, not justified by a legitimate fear of the disappearance of the debtor," but that nevertheless Mr. Grant had not sustained any real injury, and that therefore no other damages than costs need be awarded.

Reviews.

Concise Forms of Wills, with Practical Notes. By W. HAYES and T. JARMAN, of the Middle Temple, Esqs., Barristers-at-law. Fifth Edition, by THOMAS SMITH BADGER, M.A., of Trinity Hall, Cambridge, and of Lincoln's Inn, Esquire, Barrister-at-law, Reader on the Law of Real Property to the four Inns of Court. Sweet, 1860.

The little book familiarly known as "Hayes and Jarman" has long been the *vade mecum* of conveyancers. It is said, with what truth we know not, that some old-fashioned lawyers invariably make it a travelling companion, for the sake not only of its law but of its literature, although the former is mainly to be found in the shape of short notes, and the latter finds expression in the difficult form of concise precedents. The joint production of two of the most accomplished conveyancing counsel, one of them being, moreover, about the most elegant legal writer of the time, could hardly fail to find universal acceptance among lawyers, even though its subject were not of such general interest. Solicitors have been accustomed to regard it with peculiar favour, because it is exactly suited to their requirements. Complete but not diffuse, accurate but not pedantic, eminently practical and yet a reliable exponent of principles, it was all that the lawyer engaged in the practice of his profession could desire as a guide in one of his most difficult duties. It is no wonder then that it has so long and so well kept its ground against all comers. Nothing but an ever gathering host of new authorities ranged under some hostile banner could ever drive it from the field; and this undesirable event Mr. Badger has for the present effectually averted. With industry worthy of the cause he has drawn contingents from every available quarter, and with the science of an able general has disposed of his forces in a manner to command entire approval. All lovers of "Hayes and Jarman" may therefore still cling to their treasure, without fear of being surprised by some unhappy ambuscade of the reporters' legion, or of being overwhelmed by the ever rising tide of judge-made law. Whatever may be done for the defence and security of practitioners, who are accustomed to be called upon betimes, without much warning, to do battle with or out-manœuvre the hosts of recorded decisions, which threaten to cross the purposes, and to defeat the intentions of testators, has been done in this edition of "Hayes and Jarman." Every case of any significance relating to the law of wills is to be found in this still (comparatively) small volume. Very many decisions are no doubt only referred to in groups, without any attempt to exhibit the nice distinctions between members of the same group, such as might be looked for in a more elaborate treatise. But the classification, such as it is, is extremely well made, and is always sufficient, not only to put a lawyer "upon enquiry," but also to point out to him the most direct and useful sources of information. "*Prudens interrogatio dimidium scientiæ*," said Lord Bacon, when speaking of the value of hypothesis in physical investigations; and so it may be said that the use of a lawyer's manual is not to tell him what the law is, so much as to direct him how and where to search for it amid the hundreds of volumes where it lies veiled from the vulgar view. The book now before us is most skilfully adapted for this purpose; for while it would be impossible in so small a compass to give any thing like a treatise upon the subject of wills, the authors (including the present editor) have noted all the decided cases down to the present time, having special regard to the convenience of persons accustomed to the use of precedents. We have been unable to discover the omission of any cases of importance, whether appearing in what are called the "authorized," or the hebdomadal, reports. Indeed Mr. Badger has very much increased the value of the work by adding to it, not merely the modern decisions in courts of equity and common law, but also those of the ecclesiastical courts and the Privy Council, for which diligent search appears to have been made. All the old precedents, moreover, have been revised; and more than a hundred pages of useful miscellaneous forms have been added by the present editor. Among the most valuable contributions which he has made to the notes, may be mentioned those relating to the power of executors to sell under a charge to pay debts, p. 430; and to the law of domicil, p. 19. The appendix also contains a note on the execution of wills at the Cape of Good Hope, which has been adapted by the editor from a communication which has been made to him by Mr. Porter, (the Attorney-General at the Cape) on the Roman Dutch law touching this point.

As there may be some of our younger readers who have not read the prefatory observations to the "Hayes and Jarman" of five-and-twenty years ago, we shall extract from it the following passage which bears the marks of Mr. Hayes' pen.

"A notion," says the writer, "has unfortunately obtained, that, while to the preparation of a deed learning and experience are essential, the disposition of a man's property by will may be safely confided to the minimum of legal knowledge. Hence, the conveyancer is rarely consulted, the solicitor is often dispensed with, and the schoolmaster too frequently called in: or, if the schoolmaster be not at hand, there is commonly to be found in every village a will-maker of equal courage and ignorance; the collector or inheritor of exploded forms and phrases. This notion proceeds upon the two-fold error, that wills are expounded, not according to the rules of law, but according to the dictates of common sense, and that common sense is the same in all men. The rules of law, when applied (as applied they must be) to wills thus unadvisedly prepared, often defeat the intention, that is, the probable intention; but if those rules were discarded for a season, common sense, outraged by the conflict of opinion, making one poor word, perhaps, the sport of many contrarient decisions, would soon demand their restoration. The general impression, however, that wills are not amenable to the strict rules of legal construction extended its influence to the judicature, and induced a certain laxity of interpretation, which confirmed and encouraged the original error. Thus confident ignorance on the one hand and judicial indulgence on the other, produced and reproduced blunders and obscurities of every shape and shade which have swelled the mass of adjudication, without advancing the law as a science."

We shall add only one other extract, which shall be for the peculiar benefit of students.

"There cannot, indeed, be a greater mistake than that of supposing that a very small stock of legal terms, added to a very ordinary education, suffices to accomplish the will-maker. On the contrary, a will is alone capable of exhausting the science and ingenuity of the most able conveyancer. It may embrace every allowable modification of property, every possible scheme of disposition. As it is the duty of the will-maker (at least of the solicitor undertaking that office) not merely to draw, but to advise, he should be conversant as well with the various modes as with the various forms of gift; prepared alike to suggest the aptest kind of destination, and to effect it by the aptest words. Even of those testators whose wills are prepared under professional advice, it may be safely affirmed that while the intentions of not a few are frustrated by failure in point of expression, the intentions of a far greater number are never elicited by presenting to their consideration the arrangements most suitable to their views and circumstances. In a large proportion of cases, the nature as well as the language of the disposition, is determined, not by the deliberate choice of the person who makes the gift, exercised over the various modes in which the law allows him to direct the enjoyment of his property after his decease, but by the extent of the knowledge possessed by the person who prepares the instrument, which may therefore be said

to exhibit the mind of the framer rather than the will of the testator."

"On the other hand, it must be admitted, that the blame of miscarriage is not unfrequently attributable to the testator himself. Want of explicitness or candour in the communication of the actual state of his property or circumstances, or an obstinate attachment to some favourite project, may render abortive the most judicious advice."

The suggestions for preparing wills, and the directions for their execution, which have so long been the guide and counsel in these particulars of young practitioners, will no doubt remain so for at least another generation of lawyers. To the former Mr. Badger has added some useful hints; and indeed throughout the work, the hand of a skilful and conscientious editor is everywhere visible.

A Treatise on the Law of Highways, comprising the statute law and the decisions of the courts on the subject of highways, public bridges, and public footpaths, practically arranged; including the law of highways in districts under local government boards, the South Wales Highway Act, 1860, and an appendix of statutes. By W. Cunningham Glen, Esq., Barrister-at-Law, Author of "The Law of Public Health and Local Government." Butterworths, 1860.

The Laws of Turnpike Roads, comprising the whole of the general Acts, the Acts as to the union of trusts, for facilitating arrangements with their creditors; the interference of railways and other public works with roads, their non-repair, and enforcing contributions from parishes, (including also the Acts as to South Wales turnpike roads), &c., practically arranged with cases, notes, forms, &c. By George C. Oke, Author of the "Magisterial Synopsis." 2nd Edition. Butterworths, 1860.

One of the great legislative feats which were to have off last session of Parliament, but stand over until next February, or perhaps indefinitely, was Lord Redesdale's Bill to consolidate and amend the laws relating to highways, and which, whenever it becomes law, and comes into effect, will make Mr. Glen's book prematurely out of date, so far as it is based upon the statutes now in existence. As Lord Redesdale's Bill, however, proposed to postpone its operation, if passed into a law, until the year 1863, there will be probably time enough for the present edition of Mr. Glen's treatise to be exhausted. Until this work on the law of highways, no book on the same subject had appeared since 1829, except some annotated editions of the General Highway Act. Mr. Glen, therefore, undertook a work which was really required, not only by the profession, but by a large class of persons interested in the law of highways; and Mr. Glen's official position has no doubt qualified him peculiarly to discharge such a task with efficieny. He tells us in his preface that "The author has endeavoured to furnish his readers with a lucid exposition of the law of highways, arranged in what may be described as the natural sequence of events, opening with the appointment of officers for the management of the highways, and closing with the enforcement of penalties and forfeitures for offences against the law; so that anyone desirous of ascertaining the law upon any particular subject, may readily find all that he desires to know upon it, expressed in language devoid of technical phraseology and tautology of Acts of Parliament—which are more than usually conspicuous in the General Highway Act. With the same object he has endeavoured to place the decisions of the courts in such a manner as would elucidate the statute law and regulate future proceedings." Mr. Glen has succeeded in what he here proposes, and his treatise will be indispensable to practitioners interested in the law of highways. All the statutes bearing upon the subject appear to have been carefully investigated, and a great number of authorities have been incorporated into the text.

Mr. Oke's book is confined, as its name imports, to the subject of turnpike roads. It commences with a tabular list of the principal General Turnpike Road Acts, showing the time of passing, what each repeals or amends, and where the provisions in force are to be found. Mr. Oke appears to have a genius for the tabulation of statutory enactments, as we recently had occasion to observe when noticing his "Magisterial Synopsis." If another proof were wanting of this observation, it would be found in the book now before us, in which the tables to which we have referred are admirable specimens of tabular exposition of a branch of law. In the introduction to the present work, Mr. Oke treats of the difference between that portion of our highways known as turnpike roads, and the other very numerous class of public roads not turnpike roads, but which come within the designation of highways. He then proceeds to give a view of the general Acts, 3 Geo. 4 to 9 Geo. 4 (1822 to 1828), and goes on to discuss the alterations in the law since the last-mentioned date. The remainder of the work is composed of chapters treating of trustees and their officers, their appointment, duties, liabilities, &c.; the union of trusts; the purchase of lands by the trustees, and the property in roads; mortgages on the tolls, and the creditors of trusts; the making and diverting of roads, the repairs of roads, and contributions to the same; tolls, their imposition, letting, &c.; the interference of railways and other public ways with roads; and offences as to turnpike roads, their penalties, and mode of prosecution. The appendix relates to Acts affecting South Wales only; and there is to the whole an elaborate index, such as to make the book very convenient for the purpose of reference. All Mr. Oke's books are well done in their way; and his "Turnpike Laws" is an admirable specimen of the class of books which are required for the guidance of magistrates and legal practitioners in country districts.

Juridical Society.

THE TAXATION OF SUITORS.

At a meeting of the Juridical Society, held on Monday last, Mr. F. S. Reilly in the chair, Mr. S. Martin Leake read a paper on this subject, which was in substance as follows:—

I have been induced to bring this subject before the Society in consequence of several opinions recently expressed upon it as a ground for important practical conclusions, not having any new theory to propound, but thinking that it would be expedient to come to a clear understanding as to the precise nature of the doctrines involved in the term "taxation of suitors," and wishing to suggest that some points connected therewith are susceptible of a more minute development than they have as yet received.

In the report on the concentration of the courts recently delivered to Parliament, the Vice Chancellor Wood, one of the commissioners, expresses his opinion as follows:—"I entertain a strong opinion that all courts for the administration of justice should be supported by general taxation, and that the protection of property requires that the maintenance of civil tribunals, no less than the police and military force of the country, should be a public burden. Hitherto, however, this principle has not been generally admitted, and the courts have, more or less, been supported by a tax on the suitors of each court in the shape of fees." The Master of the Rolls, in giving evidence before the same commission, states his opinion to a similar effect:—"It is, in my opinion, the duty of the country to provide for the administration of justice without the slightest expense to the suitors In that respect, I go to the full extent of the speculations of Mr. Jeremy Bentham, but I am also satisfied that you will not at present induce the country to do it." These opinions lead the holders of them to the conclusion that the most appropriate application of a large sum of money now held by the court of chancery, called the Suitors' Profit Fund, would be to relieve the suitors in that court from the payment of fees—a conclusion which I here refer to only for the purpose of pointing it out as a strong illustration of the important practical ends to which the doctrine in question may be made subservient.

On the other hand, in the discussion which arose in the last session of Parliament on the vote for the county courts, much disapprobation was expressed at the large proportion of the expense of these courts which was thrown upon the country; and complaint was made that the funds thus devoted to the aid of litigation were diverted to other purposes, and that these courts were used systematically by loan societies, hawkers and others for the mere purpose of collecting their debts instead of employing regular paid agents for that purpose; and some measures were even suggested as expedient for limiting the facilities for the recovery of small debts.

Bentham's well-known "Protest against Law Taxes," which, I presume, contains the speculations referred to by the Master of the Rolls, is directed exclusively against impositions on judicial proceedings for revenue purposes, and makes no reference to fees imposed upon any other grounds or for any other purposes; whereas the opinions first above quoted maintain a

complete exemption of the suitor from all contribution towards the costs of administering justice. The justice and expediency of the imposition of taxes for purposes of revenue depend upon fiscal rather than juridical considerations, and are discussed by Bentham chiefly in that light. He explains how the tax on law proceedings infringes nearly all the conditions which, according to political economists, a tax for revenue purposes should satisfy. It falls at the most unfavourable moment, when the tax payer is already deprived of some property, or right, or subjected to other claims. It is uncertain both in time of incidence and in amount, and cannot at all be foreseen or provided against. The penalty for non-payment is a total denial of justice, carrying with it consequences quite incommensurate and incongruous with the default in payment. Its only fiscal virtue is facility of collection; it executes itself, and gives no room for evasion or smuggling. Bentham further urges many other arguments, on grounds of expediency against the tax, and exposes the fallacy of the common arguments in its favour. I need not here refer to the Protest further than to point out the exact nature of its object, and of the chief arguments used, in order to distinguish them at the outset from the different objects and views proposed for discussion in this paper to which they appear to me to have no application. In Bentham's time, the term taxation of suitors was far more plain and significant than it is at the present day, importing then an actual profit to the State at the expense of the suitor. Fees on law proceedings were very burdensome in all cases, and, there being no effective small debts courts, fell with an equal burden upon all actions, whatever was the amount in dispute. It was computed that the expense of carrying through an action was, at the lowest rate, not less than £24 on the plaintiff's side alone. In the case of small debts, the charge for fees so far exceeded the fair remuneration for the services conferred by the Court, as to leave a large balance to be devoted to other purposes, and was thus equivalent to taxation in the strictest sense of the term. In this broad light the system was regarded by Bentham, and protested against with vigour and success. The diffusion of his doctrines brought about a great curtailment and diminution of fees of all kinds, and probably conduced in a great degree to the establishment at a later date of an efficient system of courts for the recovery of small debts, conducted upon a simple procedure, and in which the fees are proportionate to the amount in dispute.

Bentham's "Protest" has, I believe, been generally considered as conclusive on the fiscal question of raising revenue from law proceedings; and probably no Chancellor of the Exchequer at the present day would think of reverting to litigation as a subject of taxation. Fees, however, still continue to be exacted in all courts, and not without a general feeling that fees to some extent ought to be exacted and are justifiable, at least without any strong feeling to the contrary. This could hardly be the case if arguments, as conclusive as those used by Bentham in his "Protest," were equally applicable to all payments of the kind, with whatever view and for whatever purpose they may be demanded. The term taxation of suitors is vague, in not clearly conveying the purpose for which the tax is levied. Taxation of suitors may be justifiable for some special purpose, though unjustifiable for others; some proceedings in law suits may properly be charged upon the suitors, though others may not. Entirely agreeing with Bentham that law proceedings are not a proper subject for taxation for the general purposes of the revenue, the question appears to me still to remain, whether some payments for some proceedings in actions may not fairly be demanded; and I propose on the present occasion to put the question in the more definite form, whether the taxation of suitors is justifiable for the limited purpose of maintaining the judicial establishments used by the suitors? Ought the courts of justice, with their appendant executive offices, to be provided by the State gratuitously to the suitors; or ought the suitors to bear some, and if so, what share of the expense? The first step towards the solution of these questions seems to be, to determine the exact nature of the relation between the administration of justice and the application for it—the Court and the suitors, with a view to appreciate justly what it is the latter are called upon to pay for, and upon what terms they receive it; and the determination of this relation seems to lie in the general nature of the proceedings in all litigation.

A law suit, properly so called, may be described briefly as a claim by one party against another who repudiates it, an appeal to the court to enforce it, inquiry by the court into the matter in difference, judgment by the court, followed by compulsory execution. In such a transaction there are three distinct parties involved, the plaintiff, the defendant, and the court—in the language of the civil law, *actor*, *reus*, and *judex*, including here, however, in the term court, all the share contributed by the State, by means of judicial or executive officers, in the progress of a law suit. Each of these parties has his peculiar part to perform: the plaintiff, to prefer his claim in the prescribed form and to support it by all means in his power; the defendant, to state and maintain his case in answer; the court, to decide between them, and regulate the proceedings generally. Each party has to expend time and labour in performing his share in the proceedings; and the costs may accordingly be considered as incurred by these parties, correspondingly to their respective expenditure of time and labour; and we may call them, for the sake of convenience, the costs of the plaintiff, of the defendant, and of the court. The question then of the incidence of the costs of the court as between the court and the parties, becomes the question here proposed for discussion.

It will be found useful to touch briefly upon the other questions which arise as to the distribution of the costs between these parties with the view to distinguish them clearly from the question in hand, and to avoid confusion by assigning the proper place and limits to the familiar maxims and principles connected with the subject. These are, then, the questions as to the costs of the plaintiff and defendant as between themselves; as to the costs of the court as between the plaintiff and defendant; as to the costs of the plaintiff and defendant as between them and the court—all which phases of the great question of costs are quite unconnected with the present, and may be dismissed in a few words.

The costs of the plaintiff and defendant as between themselves are regulated by the well-known rule that the loser pays costs to the winner. It was the practice of our common law to compute the costs of a successful plaintiff as part of his damages, which he recovered against the defendant—a practice which was further enforced by the Statute of Gloucester. The right of a successful defendant to his costs against the plaintiff was not recognised until the statute of Henry 8, since when we may be said to follow strictly the Roman maxim, *victus victori in impensis condemnandus est*. The general rule, however, is occasionally modified by a discretionary power, which the court exercises over these costs in some instances.

The incidence of the costs of the court as between the plaintiff and defendant follows the same general rule. The rule, indeed, includes all the costs which the successful party is put to, whether incurred in his own behalf, or imposed upon him by the court; so that, where the court makes the suitor pay for its services in the first instance, the successful suitor is reimbursed ultimately by the unsuccessful one, who is thus made to pay the costs of the whole proceedings, both of the successful suitor and of the court. In such case, however, if the unsuccessful suitor becomes insolvent, the successful suitor fails to recover his costs, and the costs of the court in part fall upon him—that is to say, the loser ultimately pays all the costs of the court, but the winner guarantees to the court his share of them by prepayment. Thus, as between the court and the suitors, the maxim that the loser pays costs has no application.

The question respecting the costs of the suitor, as between the suitor and the court, does not appear to have ever raised any difficulty. Though it has been strongly maintained that the Court should pay its own costs, and should charge nothing to the suitor, or at least to the successful one, for its intervention. I am not aware that it has ever been seriously considered that the suitor, though successful, had any claim against the Court, for indemnity against his own peculiar expenses; that is, that it is the duty of the country to conduct the litigation of the suitor entirely at the public expense. Indeed, there would be the greatest difficulty, if not an impossibility, in carrying such an arrangement into effect, as the Court would certainly not indulge the suitor with discretionary expense in collecting evidence and retaining counsel, and the suitor would not submit to have his cause taken out of his own hands and conducted by a mere officer of the Court. In the event of the abolition of all fees the state of things which is contemplated to prevail by the advocates of gratuitous justice is described by the Master of the Rolls, on the occasion previously referred to, as follows:—"A suitor then will have to pay his own solicitor's bill, which is very proper, and his counsel's fees, which is also very proper; but he would not have to pay towards the support of the court, or the support of the judge, or the support of the offices, or even for the purpose of obtaining an authenticated copy of a particular document. He would have merely to pay what it cost, and everything else would be provided for him free of expense. I think that that would be a most desirable state of things." This phase of the question may therefore be dis-

missed with the assumption that the suitor may be justly charged, as against the Court, with the costs of all the labour which is properly assignable to his share in the drama.

The remaining question is the one to which attention is here particularly invited: Whether the *costs of the Court* should be paid for by the State or the suitors? That is to say, whether the services of the courts and their attendant offices should be supplied gratuitously to the suitors at the expense of the public, or whether they should be paid for by the individual suitors who require them? These services comprise, speaking in general terms, process, trial or hearing, judgment, and execution, together with the regulation of the necessary accompaniments of records, documents, and evidence. For the purpose of determining on whom the burden of these things should fall, it seems necessary to ascertain what is the position in which the Court stands relatively to the suitor, the nature of the services rendered, for what purpose they are rendered or undertaken, and for whose benefit?

Now independently of the artificial establishment of courts of justice, under what may be called natural procedure, every one would have to depend upon his own resources in seeking redress for an injury, and might avail himself of all his powers of persuasion or force to obtain it. If his own powers were not sufficient, however, he would naturally invoke the assistance of others. He would publish his wrongs and rely upon the justice of his cause for some answer to his appeal. His neighbours and acquaintance would certainly not stand by indifferent, and even strangers would not suffer wrong to pass before their eyes without an attempt at redress. Their moral sense, combined with a regard for their own security under similar circumstances, would prompt an intervention; and their mediation would be rendered, not as a matter of bargain, but as the performance of a duty.

In the present age of the world such a state of things is imaginary, but an analogy may perhaps be found in the intercourse of civilized nations, which are not amenable, in their dealings with one another, to any other law than that of nature, reason, or morality. Amongst the nations of Europe, in theory, at least, the weakest enjoys the protection of the strongest against unjust aggression and injury, and can invoke an assistance which the latter are actuated by motives both of morality and of policy to render. Upon the occasion of a dispute arising between two of this family of nations, it is common, if the matter in difference is an honest one, to appeal to a congress of the other powers for a settlement. Services of this kind are rendered as a matter of duty, and not in the expectation of reward or compensation. The voluntary services of other States, as allies and arbitrators, are regarded with respect and honour, which, as the services of mercenaries, would meet with universal scorn and repugnance. But though the party injured may justly appeal to others for redress, he cannot expect that the efforts of others will supersede all exertions of his own. Assistance will only be extended to him who is wakeful as to his own rights and earnest in maintaining them. It lies upon him to make known his wrong, to prefer the necessary appeals in the proper quarter, and to substantiate his cause by every necessary means in order to convince the world of its justice, and to justify the intervention. As he can have no claim on others to relieve him of these exertions, he can as little claim compensation in respect of them except against his adversary, who has occasioned their necessity. A civil wrong is essentially a private misfortune befalling the individual sufferer only, who can expect no further relief at the hands of the public than an answer to his appeal for redress.

A consideration of the natural order of things upon abstract principles of morality and justice seems to lead to the conclusion that the audience of plaints and adjudication of disputes should be gratuitous. If we turn to the more practical consideration, how and why the administration of justice is embodied in the establishment of a judicature, we shall here find, I think, an additional and more certain reason for the gratuitous intervention of the State. The first duty of a State is to provide for the maintenance of peace and order, and this object imperatively requires the suppression of everything in the nature of private warfare, violence or exaction. The penal laws for the preservation of order at once render every attempt at private redress impossible. It then becomes an act of mere justice on the part of the State to provide a substitute; and the establishment of courts of justice supplies a regular and efficient procedure for the settlement of disputed claims, in place of the irregular and desultory redress by private means. The laws of civil procedure do not alter substantially the characters of the disputants, or the nature of the State intervention; but prescribes a regular and settled form, according to which only redress may be pursued and obtained. The final object of the institution of civil tribunals is the peace of society. The immediate object and most efficient means towards the final end is the exact distribution of justice to individuals. The civil judicature is a general benefit to all, both suitors and non-suitors, though the former only have occasion to use it. If individuals incidentally receive a special benefit, they on the other hand, especially feel the corresponding restriction of liberty; and in consideration of the benefit they tolerate the restriction. The design of the institution is to benefit all equally by the preservation of peace and order, and to this design all should equally contribute. So clear it seems that the suppression of violent redress and private warfare is the prominent and final end of the institution, and the substituted mode of decision merely the means employed to effect it, that in the infancy of jurisprudence we find the final end directly attained with very little regard to the means. Before the intervention of law private quarrels ripened into family feuds which rapidly involved whole provinces in warfare. The first step was to confine the contest to the real litigants; and in the age of judicial combats, courts went no further than to restrict the battle to the actual parties to the suit, and sat by only to secure fair play. Trial by ordeal applied to civil disputes, as a substitute for private feuds was at least highly conducive to peace, and beneficial to the public at large; but it would be hard to maintain that the suitors should be compelled to pay for the privilege of thus deciding their quarrel. In these cases the courts had not yet assumed the jurisdiction of themselves deciding according to settled law, which was ultimately found the most effectual means of suppressing the evil for which it was substituted.

It would seem, therefore, that the State, in assuming the exclusive dispensation of justice, for purposes entirely subservient to its own interests, should do so at its own cost; but that the suitor has no claim to be relieved of his own peculiar costs, being those occasioned by his appeal to the judicature, and the maintenance of his cause before it. A few important subsidiary arguments and explanations remain yet to be noticed.

The rule of law, as between the plaintiff and the defendant, throws all the costs on the loser. It is sometimes suggested that a like rule might be applied with respect to the costs of the court; that they might be fairly imposed on the loser by way of penalty for his false claim. It is imputed to the loser that he is in the wrong, and therefore should be made liable for the consequences. It appears to me that such a rule would be eminently unjust and unreasonable; nor do I think that the prevalence of this rule between the plaintiff and defendant can be accounted for by imputing moral blame on the loser. In causes turning on points of law, the rule operating between the parties would, it is true, be the necessary conclusion from the legal presumption that everyone knows the law. If this presumption were as true in fact as it is sound in theory, the party wrong in his law would also be wrong, in fact, in his conduct, and would justly be made to pay for all the consequences of his wrong. This presumption, however, if carried to its full extent would produce harsh consequences, and is not necessary for a satisfactory explanation of the rule where the law is really doubtful. Each party has at any rate equal means of ascertaining the law, and the same liberty of opinion in construing it, and by resorting to litigation he stakes his construction against that of his opponent; and there seems at least no injustice that as between themselves their expenses should abide the event and be thrown upon him whose construction is erroneous. Besides, it is a general principle pervading all civil transactions, that a party should be held responsible for his acts without any regard to his moral intentions. As between the State and each party, the case is very different. The same rule has no application at all. The doubt in the law is a real hardship upon the parties, and is the cause of their litigation. The State, which makes the law, is the creator of the doubt and the real cause of the litigation, and, therefore, should be held responsible for the costs of the decision. It cannot in justice call upon the parties who are embarrassed by the doubts in the law to pay the expenses of courts which it is found necessary to appoint to decide them: where the dispute is respecting a matter of fact there is not the same special reason why the Court should decide it gratuitously, but the general reasons urged above apply wherever the dispute arises upon a genuine and honest doubt. The jury may be considered as, *par excellence*, the constitutional English tribunal for trials of fact, and it is worthy of remark that the services of juries are always rendered gratuitously, except where the suitor is not satisfied with the average common sense

of the country, and requires a special jury drawn from a superior class. The jury in its origin appears to have exactly embodied the appeal to the neighbours for the settlement of disputes which may be considered as the method of natural procedure.

It may be urged, however, that litigation is sometimes conducted from motives not honest or justifiable, and that it is advisable to cast all the costs of the court upon the suitor, in order to repress frivolous and vexatious litigation. The only justifiable ends of litigation, which the institution of it is designed to satisfy, are those already referred to, namely, the settlements of doubts as to the law, and of differences on matters of fact. A third cause of litigation is often found, in fact, in the wilful assertion of unjust claims and repudiation of just ones; the former dictated by motives of annoyance or extortion, the latter for the purpose of annoyance or delay. But the legitimate ends of litigation only are strictly admissible to consideration in the present discussion Where there is no real matter in difference either of law or of fact, the suit can have but one result, adverse to the party who promotes it without a cause. The motives of maintaining such a suit can have no further effect than to occasion unnecessary proceedings and costs. A groundless suit is an abuse of the process of the court. Courts were not established nor rules of procedure framed for such cases, and they throw no light upon their organisation, further than as shewing the necessity of stringent exceptional rules to meet them. There can be no question that the party knowingly in the wrong should be condemned in all expenses which he wilfully occasions. He can be entitled to no favour; his appearance as a suitor is a false pretence, and he may be justly made to pay all the costs both of his adversary and of the public. The proper mode of dealing with such a case, however, does not appear to have any bearing upon the question now before us, which arises only where the law suit is, so to speak, an honest one, the occasion of which is produced by a justifiable doubt, either as to matter of law or matter of fact. It is true that at the outset the real cause of the law suit is not discovered, and it is presumed that the parties are acting honestly, and that the suit is a matter of necessity; but if it should appear in the progress of the suit that it is maintained from sinister motives, every court has a sufficient jurisdiction to prevent the abuse of its process, and to stop the proceedings, throwing the costs upon the delinquent party. If these means are not sufficient, and if such abuses are of so frequent occurrence as to become a public inconvenience, they might be further met with suitable penalties. But a strong line of demarcation should be drawn between the civil and criminal bearing of such conduct, and the proceedings of civil courts should not be made subservient to the repression of a public wrong. All suitors should not be subjected to loss and inconvenience in order to punish the misconduct of a few.

In applying the results of the above observations some difficulty may be found in fixing the limits between the functions of the Court and those of the suitor. The common rules of procedure make no practical distinction of this kind. The whole course of litigation from first to last is brought under the jurisdiction of the Court, and the Court intervenes more or less at every step for the preservation of formal order and accuracy. The actual work of litigation is divided between the Court and the suitors, with the view of most conveniently arriving at the final termination, but with little regard to their characteristic functions. For instance, it seems strictly the province of the Court to analyse the opposite statements of the suitors, to balance one against the other, to refer contradictions to trial, and to apply the law, to reason deliberate and decide. Yet in our system of procedure the analysis of the dispute, and the elimination of the issues, is effected by pleadings; and the costs and conduct of the pleadings are thrown wholly upon the suitors, who are also called upon to supply the Court with reasoning and argument. The suitors, in these respects, are made to perform in some degree the functions of the Court. On the other hand, the Court does much for the suitors; it assists in summoning the defendant and the witnesses; it executes the judgment and puts the party entitled in possession of his property. In these offices the Court seems to act rather as the agent and on behalf of the suitor, and it may be reasonably doubted whether the public should be called upon to pay for the assistance given to the suitor in supporting his own case, or for the costs occasioned by the obstinacy of a suitor in evading process. The case may be put thus: the suitor applies to the Court for the assistance of the public force; it may be said that as he wants it for his private affairs he should pay for it; but the embarrassment and doubt felt by the Court in answering his application, arising upon a consideration of the law and the facts, is peculiarly the difficulty of the Court, and the imperfections of the law or of the judges should be made good by the public. Where the law suit is an honest one the doubts of the judge are the chief difficulty and the chief expense; every good procedure gives facilities to suitors for presenting a case to the Court in an amicable manner with the fewest possible formalities and with little expense. Where the law suit is occasioned by the insolvency or unwillingness to pay of the defendant, it is employed merely as a process for the collection of debts, which though undisputed are often found to require a gentle pressure to enforce. In such cases the strictly judicial functions of the Court are seldom called into exercise, it being difficult if not impossible to extend litigation to a hearing, without a substantial ground of difference. There seems no reason why creditors should not be called upon to pay for the collection of their debts; but at the same time there seems no inherent anomaly in the country providing an establishment for that purpose. There are numerous associations for the protection of property and trade, to which the members contribute equally for the purpose of gratuitously providing legal assistance to those who suffer injury. The courts of justice may be regarded, in one point of view, as the instruments of an extended association for a similar object.

English jurisprudence in early times seems to have favoured the gratuitous administration of justice, but her later practice contradicts her early profession. The primitive conception of administering justice seems to have been unalloyed with mercenary motives. The emphatic declaration of Magna Charta *nulli vendemus justiciam*, as delivered by the Crown on behalf of all courts of justice, seems to repudiate pecuniary advantage of all kinds, and to promise generally free access without fees. Sir E. Coke commenting on the Statute of Gloucester, which first gave costs to the plaintiff, says, that by this statute it may be collected that "justice was good cheap of ancient times, for in King Alfred's time all writs remedial were granted freely." The eagerness of the suitors themselves to propitiate justice with gifts may, perhaps, first have induced her to sell her favours; until at last she may have found herself compelled in self defence to exact fees impartially from both sides. It became a prerogative of the Crown as the fountain of justice to levy fees on law proceedings; and the profits of courts of justice were enumerated as a branch of the Royal Revenue. Manorial and inferior courts enjoyed a similar prerogative. The church lent its countenance to the system by exchanging things even holier than justice for fees. By degrees, fees were enacted by judges and officials on all possible occasions, and in many cases the form in which they were paid assumed the appearance, either by grant from the Crown or by prescription, of a perquisite to the individual receiver and was invested with the rights of private property, retaining no semblance of a tax paid to the State. In modern times a strong reaction has set in against this system, both in respect of the amount of fees and the mode of exaction.

With respect to the mode of exaction, fees in courts of justice are now universally recognised as rightfully levied only towards the general expenses of the court, and not for the private emolument of any individual official. With respect to the amount of fees charged, a sort of compromise seems to have been struck between the two contrary opinions that the courts should be paid for by the State and by the suitors. In all our courts both the State and the suitors contribute towards the payment of the expenses, though not according to any fixed general proportion. The scales of fees are from time to time revised and settled according to some sort of practical instinct determining what share should be cast upon one party and what upon the other. According to the plan of assessment adopted, the share of the expenses from the suitor is spread evenly over all the proceedings in which the courts or the offices intervene, so that the payments are made concurrently with the progress of the suit. No sort of fine is paid at the commencement or at the conclusion of the proceedings, but the fees are levied upon the particular step taken, and in return, as it were, for the particular services then rendered.

The contribution towards the costs of the court thus assessed upon the suitors is obviously irreconcileable in principle with the free administration of justice in the widest sense of the term. In the result, however, there may perhaps be a nearer approach to gratuitous justice than at first sight appears, the true state of things being in some degree disguised by the mode of assessment. As no exact distinction is made in our procedure between the separate functions of the court and of the suitor, so no such distinction appears in the assessment of fees, every step in

the cause which must be taken with legal formality being subject to a fee. Court fees are charged for judgments and decrees, and also for trials, and the proceedings connected therewith; and these seem beyond all doubt to be assignable exclusively to the strictly judicial functions of the court, and, if the principles suggested above be correct, should be free and gratuitous. On the other hand, the fees paid upon other proceedings simply executive, which might be charged to the suitor, are probably far less in amount than the expenses incurred and the services rendered, so that while some portions of the proceedings may be paid for by the suitor too highly, or are such that he ought not to pay for at all, other portions he receives at too low a rate; and it is possible that in this interchange of offices the suitor may be the gainer, and on the whole may not be so heavily taxed as he appears to be. This, however, it must be confessed, is at present a matter of mere conjecture.

It would be interesting to know precisely what proportion of the expenses of our courts of justice is paid by the suitors, and what proportion by the public. The total amount of fees exacted in each court may be found in Mr. Redgrave's "The Judicial Statistics." They are, in the common law courts, £58,902; in the courts of chancery, £97,984; and in the county courts, £215,623. But it is remarkable that in this collection of judicial statistics, in other respects apparently so complete, no return is made of the expenses of the various courts. It would be difficult for a private inquirer to estimate these expenses, in consequence of the complex manner in which separate portions of them are charged upon various funds. If complete returns of the costs of the courts were comprised in the returns of judicial statistics, we should be enabled to say what portion of the expenses was paid by the country, and might then draw a comparison between the positions of the several courts with respect to the gratuitous administration of justice, and ascertain whether the suitors in one court are more favoured than those in another. The returns of Mr. Redgrave show that in proportion to the total sums in litigation, the Court of Chancery is far the most favoured tribunal, and the suitors are the worst off in the county courts, as might be expected from the smallness of the sums there in dispute. There is much reason for supposing that the courts stand in the same relative position with respect to the proportions of the cost of administering justice contributed by the suitors in each, and if so, there would seem to be no comparative grounds for granting further relief to the suitors in chancery, or for casting additional burdens on suitors in the county courts; but, on the contrary, justice would seem to require that they should all be placed as nearly as possible on the same footing, and that fees should either be diminished in the county courts, or increased in the courts of chancery. Notwithstanding that the county courts may still be more highly taxed comparatively than the courts of common law, and the courts of chancery, they have nevertheless been a great boon to the country, because they have introduced a scale of taxation more commensurate with the small amounts of the debts, and when complaint is made of the large sum these courts cost the country in comparison with the total value of the debts and property dealt with, it should be remembered that the amount in dispute is a very imperfect test of the cost of litigation. The complaints respecting these courts that they supply too great facilities for recovering debts, sufficiently answer themselves. The disuse of professional assistance for the collection of debts is a proof of the simplicity and efficiency of the procedure. The increase of lawful trades and businesses such as those of hawkers and loan societies, which could not be carried on without the aid of these courts, must be beneficial to the public. Indeed, it is difficult to conceive what evil can arise from the utmost facility being extended to the recovery of debts.

In the discussion which ensued upon this subject, several speakers referred to the important distinction between contentious law suits, such as were contemplated in the paper read, and *quasi* law suits, instituted merely for administrative business connected with property and other rights, such as the chief business in the courts of bankruptcy, some branches of Chancery jurisdiction, the business in the Probate Court, and some speakers included the Matrimonial Court. The general feeling seemed to be that law proceedings of this character, like mere conveyances, were not only open, but suitable for taxation, even for general purposes of the revenue. In other respects the tone of the discussion was, generally speaking, in accordance with the views taken by the reader.

University Intelligence.

CAMBRIDGE, Dec. 10.

The following subjects of examination for honours in law have been issued for December, 1862.

Roman Law.—Cicero, Pro Quintio; Digest, Book 44; Gaius and Justinian's Commentary and Institutes; for translation. The paper of questions on the Roman Law will be taken principally from Linley's Jurisprudence, Part II., Chapters i., iv., v.

English Law.—(a) Blackstone, Vol. III., any recent edition that follows the original arrangement: (b) Chandelor v. Lopus (2 Croke), together with the notes in 1 Smith's Leading Cases; Pasley v. Freeman (3, T R.), together with the notes in 2 Smith's Leading Cases.

English History.—The reigns of James I. and Charles I., with special reference to the Statute Book and Hallam's *Constitutional History*; State Trial, Earl of Strafford (Howell's *State Trials*); see also Rushworth and Nelson.

International Law.—International Rights of States in their Hostile Relations, see Wheaton's *Elements*, to be compared with Phillimore's *International Law*; Treaty of Paris, 1856.

The Habeas Corpus in Italy.—The following letter from Count Cavour is in reply to a communication addressed to him by Mr. Edwin James, M.P., on the subject of the introduction of a law analogous to our "Habeas Corpus," and of a measure for the institution of a tribunal for immediate public investigation into all charges of a penal nature similar to that in use by our police magistracy:—"Ministry of Foreign Affairs, Turin, Nov. 29.—Dear Sir—I hasten to thank you for the letter in which you have suggested to me the introduction of the law of 'Habeas Corpus' into the system of Italian legislation. I am fully aware of the importance of that guarantee of individual liberty, and I beg to assure you that we have already made great advances in that direction. According to the present state of our law, every prisoner must within 24 hours be examined by some judicial authority, who, in pursuance of by no means arbitrary rules, either orders the immediate discharge of the accused, with or without bail, or continues his arrest, at the same time taking steps for placing him at once on his trial. Every illegal arrest, duly proved, subjects the functionary who shall have caused it to inquiry and punishment. At the same time, I quite acknowledge that the direct judicial action given by the law of 'Habeas Corpus' to persons illegally arrested assures more completely the liberty of the individual. I will at once bring the subject under the notice of my colleague, the Keeper of the Seals, within whose special province are all questions of penal legislation; and I have no doubt that he will propose to the Parliament to approximate as nearly as possible to the law of England in this matter. My colleague, Minghetti, is preparing a law which will confer most complete self-government on all the provinces and communes. In this matter, also, it is our endeavour to accomplish by other means the same results which England, the classical mother of all liberty, has already achieved. Allow me to renew to you, with thanks for the interest you take in the cause of Italy, the assurance of my most distinguished consideration.—C. Cavour. To Edwin James, Esq., M.P., &c."

The Crystal Palace.—This popular place of resort is likely to be the scene of great gaiety this Christmas. The movement for making Monday a general holiday has met with so much success that the company has determined to commence the usual Christmas festivities on that day instead of on Boxing-day, as hitherto. The centre transept and naves of the Palace have been beautifully decorated, and a variety of amusements will be provided for the visitors. Additional facilities for railway communication are now offered by the opening of the Victoria Station, as well as the line to Canterbury, which passes through the Crystal Palace Station. The Palace will be open as usual on Christmas day itself from nine till dusk.

Marriages and Deaths.

MARRIAGES.

BUDD—BEDWELL.—On Dec. 18, Thomas Hayward, son of Thomas William Budd, of No. 13, Norfolk-crescent, Hyde-park, Esq., to Clarissa, daughter of the late Francis Robert Bedwell, Esq., one of the Registrars of the Court of Chancery.

DARLEY—BROWN.—On Dec. 13, Frederick M. Darley, Esq., Barrister-at-Law, Wingfield, county Wicklow, to Lucy Forrest, daughter of Sylvester John Brown, Esq., of Melbourne, Australia.

HARWOOD—PELLEREAN—On Oct. 12, Emily, daughter of the late John Harwood, Esq., Fenchurch-street, to Etienne Pellerean, Esq., of Mauritius, Barrister-at-Law.

PATTESON—WALLACE—On Dec. 13, James Henry Patteson, Esq., Barrister-at-Law, of the Middle Temple, son of the Right Hon. Sir J. Patteson, of Feniton Court, to Annie, daughter of the late Rev. T. H. Wallace, Vicar of Bickleigh, Devon.

SISMEY—BOULTON—On Dec. 18, Thomas Sismey, Esq., of Serjeant's-inn, Fleet-street, to Mary Ann, daughter of Thomas Boulton, Esq., of Addison-road, Kensington.

TURNEY—HEATH—On Dec. 18, Thomas Turney, Esq., of Mardlin Bury Manor, Therfield, Herts, to Francis Emma, daughter of Edward Heath, Esq., Solicitor, Manchester.

DEATHS.

BAILEY—On Dec. 17, at 13, Lincoln's-inn-fields, George Bailey, Esq., Curator of the Soane Museum, in his 69th year.

BLUCK—On Dec. 11, at Tranmere, aged 16, Matilda, daughter of Edward Black, Esq., Solicitor.

BROMLEY—On Dec. 16, aged 68, Joseph Warner Bromley, Esq., of Gray's-inn, one of Her Majesty's Justices of the Peace for Suffolk.

SCOTT—On Dec. 14, aged 17 months, Ada, daughter of John Scott, Esq., Solicitor, King William-street, City.

SPIRES—On Dec. 8, in the 69th year of his age, Mr. William Spires, for upwards of forty-eight years a faithful and confidential clerk in the office of J. Arnold, Esq., Solicitor, of Birmingham.

URE—On Dec. 12, James Canning, eldest son of James Ure, Esq., Solicitor, Birmingham.

Unclaimed Stock in the Bank of England.

The Amount of Stock heretofore standing in the following Names will be transferred to the Parties claiming the same, unless other Claimants appear within Three Months:—

BOYER, JOHN WILLIAM ROBERT, Perpetual Curate of Quorndon, Leicestershire, and MATTHEW BABINGTON, Banker, Leicester, £300 Consols.—Claimed by REV. JOHN BOYER and JOSEPH BOYER, executors of Rev. John William Robert Boyer, who was the survivor, who have claimed the same.

BRAKSPEAR, ANNETTE, Spinster, Streatham, £165 4s. 9d., New Three per cents.—Claimed by the said ANNETTE BRAKSPEAR.

FARDELL, ELIZA, wife of Rev. Henry Fardell, of the Vicarage, Wisbeach, £100 15s. 1d. New Three per Cents.—Claimed by ELIZA FARDELL, Widow.

LIVETT, JAMES GRIEVE, Gent., Highbury-place, RICHARD SMITH, Gent., Godman's-fields, JONATHAN FOX, Merchant, Cheapside, and DAVID HENNELL, Silversmith, Foster-lane, £4,000 Imperial Three per Cents.—Claimed by FREDERICK HALSEY JANSON, one of the executors of Robert Riddell Bayley, who was the general executor of the said Richard Smith, who was the survivor.

English Funds and Railway Stock

(Last Official Quotation during the week ending Friday evening.)

	ENGLISH FUNDS.			RAILWAYS—*Continued.*	
			Shrs.		
	Bank Stock	233	Stock	Ditto A. Stock	106
	3 per Cent. Red. Ann.	92⅝	Stock	Ditto B. Stock	134
	3 per Cent. Cons. Ann.	..	Stock	Great Western	74⅜
	New 3 per Cent. Ann..	92⅝	Stock	Lancash. & Yorkshire	120½
	New 2½ per Cent. Ann.	..	Stock	London and Blackwall.	64
	Consols for account ..	93⅞	Stock	Lon. Brighton & S. Coast	118
	India Debentures, 1858.	..	25	Lon. Chatham & Dover	53
	Ditto 1859.	..	Stock	London and N.-Wstrn..	102½
	India Stock	..	Stock	London & S.-Westrn.	95½
	India 5 per Cent. 1850..	..	Stock	Man. Sheff. & Lincoln..	54
	India Bonds (£1000) ..	10 dis.	Stock	Midland	136¾
	Do. (under £1000).....	..	Stock	Ditto Birm. & Derby	110
	Exch. Bills (£1000)...	..	Stock	Norfolk.....	87
	Ditto (£500)....	2 dis.	Stock	North British	65
	Ditto (Small) ..	2 dis.	Stock	North-Eastn. (Brwck.)	105
			Stock	Ditto Leeds	65
			Stock	Ditto York	95½
	RAILWAY STOCK.		Stock	North London.....	103
Shrs.			Stock	Oxford, Worcester, & Wolverhampton ..	..
Stock	Birk. Lan. & Ch. Junc.	83			
Stock	Bristol and Exeter	101	Stock	Shropshire Union	52
Stock	Cornwall	6½	Stock	South Devon	44
Stock	East Anglian	17½	Stock	South-Eastern	87½
Stock	Eastern Counties	54	Stock	South Wales	62½
Stock	Eastern Union A. Stock	38	Stock	S. Yorkshire & R. Dun	80
Stock	Ditto B. Stock	29	25	Stockton & Darlington	43½
Stock	Great Northern	110½	Stock	Vale of Neath	69

London Gazettes.

Professional Partnership Dissolved.

FRIDAY, Dec. 21, 1860.

FITTER, MATTHEW ALEXANDER, and GEORGE WARDEN, Attornies & Solicitors, Birmingham; by mutual consent. Dec. 19.

Windings-up of Joint Stock Companies.

TUESDAY, Dec. 18, 1860.

MITRE GENERAL LIFE ASSURANCE, ANNUITY, AND FAMILY ENDOWMENT ASSOCIATION.—The Master of the Rolls, on Dec. 12, appointed Robert Palmer Harding, of 3, Bank-buildings, London, and 5, Serle-street, Lincoln's-inn, Middlesex, Accountant, to be official manager of this company.

LIMITED IN BANKRUPTCY.

HADFIELD'S PATENT CASK AND PACKAGE COMPANY (LIMITED).—Mr. Com. Perry has appointed Monday, Jan. 7, at 12, at Liverpool, to settle the list of contributories of the said company.

FRIDAY, Dec. 21, 1860.

MERCANTILE GUARANTEE AND ASSURANCE COMPANY.—V. C. Wood will proceed, on Jan. 9, at 1, to settle the list of contributories of this Company.

NANTILE VALE SLATE COMPANY.—The Master of the Rolls purposes, on Jan. 15, at 12, to make a call on all the contributories of this Company for 1s. 6d. per share.

LIMITED IN BANKRUPTCY.

CORPORATION RESTAURANT COMPANY (LIMITED).—Commissioner EVANS, will sit on Jan. 22, at 12.30, at Basinghall-street, to make a dividend of the estate of the said company.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, Dec. 18, 1860.

BARRY, Sir CHARLES, Knt., Old Palace-yard, Westminster, and the Elms, Clapham, Surrey. (Solicitor not named.) Feb. 11.

BOWMAN, MARGARET, Licensed Victualler, formerly of 3, Mayfield Bootle, and late of 78, St. Anne-street, Liverpool. Wright & Hunter, 6, Brunswick-street, Liverpool.

BOWMAN, WILLIAM, Licensed Victualler, formerly of 3, Mayfield Bootle, and late of 78, St. Anne-street, Liverpool. Wright & Hunter, 6, Brunswick-street, Liverpool. Feb. 14.

BRADBORNE, JOHN, Maltster, Muxton, Lilleshall, Salop. R. Pearce, Wholesale Brewer, Market Drayton, Salop, and S. Winnall, Farmer, Muxtonbridge, Lilleshall, Executors. March 25.

CLAYTON, WILLIAM RAY, Clerk, Norwich. Goodwin, Solicitor, Norwich. Feb. 1.

DERING, Rev. OSMOND, Clerk, Rectory, Edworth, Bedfordshire, but lately staying at 6, Upper Seymour-street, Portman-square, Middlesex. Parkin & Pagden, Solicitors, 5, New-square, Lincoln's-inn. Jan. 31.

GLAENTZER, GEORGE, Hatter, 55, Piccadilly, Middlesex. Lucas, Solicitor, 25, Lincoln's-inn-fields, London. Feb. 1.

GOLDEN, SAMUEL, Farmer, Benwick, Isle of Ely, Orton, Solicitor, March, Cambridgeshire. Jan. 16.

HULATT, ROBERT, Maltster & Brewer, Bedford, Bedfordshire. Turnley & Sharman, Solicitors, Bedford. Jan. 31.

JEFFERY, ANN, Widow, Canterbury-road, Folkestone. G. Fielding, Solicitor, 3, Stroud-street, Dover. Jan. 6.

MASSER, SARAH, Spinster, Selby, Yorkshire. J. L. Haigh, Solicitor, Wide-street, Selby. Dec. 1.

RODDE, PIERRE, otherwise JULES FELIX RODDE, Gent., Bedford. Turnley & Sharman, Solicitors, Bedford. Jan. 31.

SALMON, CHRISTOPHER, Gent., West Hartlepool, Durham. Crosby, Solicitor, Stockton. Feb. 1.

FRIDAY, Dec. 21, 1860.

BROWN, EDWARD, Uxbridge, Middlesex. Shackel *v.* Brown, M.R. Jan. 18.

CHAPMAN, EVE, Widow, Binbrooke, Lincolnshire. Clark *v.* Clark, V. C. Stuart. Jan. 21.

CHARLTON, WILLIAM, Gent., Brassington, Derbyshire. Fox *v.* Charlton, V. C. Kindersley. Jan. 19.

COOMBER, LYDIA, Spinster, Rochester, Kent. Goulee *v.* Bowmer, V. C. Stuart. Jan. 10.

COUCHE, EDWARD, Deputy-Commissary-General, Budleigh, Devonshire. Morgan *v.* Bignell, V. C. Wood. Jan. 14.

DAY, Rev. JEREMY, Clerk, Hethersett, Norfolk. Day *v.* French, V. C. Stuart. Jan. 16.

FREWIN, JAMES, Gent., 23, Dorchester-place, Marylebone, Middlesex. Frewin *v.* Higgs, V. C. Wood. Jan. 7.

GADBURY, THOMAS, Gent., 16, Austin-street, Bethnal-green, Middlesex. Kennett *v.* Gadbury, V. C. Kindersley. Jan. 21.

ORR, WILLIAM SOMERVILLE, Publisher, Amen-corner, Paternoster-row, London. Pritchard *v.* Tupling, Tupling *v.* Hodgson, M.R. Jan. 11.

SMITH, JOHN, Innkeeper, Black Horse Inn, St. Clement, Oxfordshire. Smith *v.* Springthorpe, V. C. Kindersley. Jan. 31.

SOAME, Sir PETER SOAME JOHN EVERARD BUCKWORTH HERNE, Bart., Heydon, Essex. Soame *v.* Procter, M.R. Jan. 18.

TAUSS, ALEXANDER, Gent., William-terrace, Commercial-road, Old Kent-road, Surrey. Bouquet *v.* Gould, V. C. Stuart. Jan. 21.

(County Palatine of Lancaster.)

FRIDAY, Dec. 21, 1860.

M'CURDY, ELLEN, Widow, Edge-hill, Liverpool. Angus *v.* Jones, Registrar of Court, 1, North John-street, Liverpool. Jan. 16.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, Dec. 18, 1860.

BAKER, DAVID, Leather Cutter, Kidderminster. Dow *v.* Baker, V.C.K. Jan. 22.

GERRISH, SAMUEL, Yeoman, Bitton, Gloucestershire. Gerrish *v.* Gerrish, V.C.K. Jan. 15.

GUEST, ROBERT MEERS, Gent., Edgbaston-place, Birmingham. Guest *v.* Richards, V.C.W. Jan. 12.

HANDLEY, RALPH, Coal Master, Fenton, Stoke-upon-Trent, Staffordshire. Dean *v.* Handley, V.C.W. Jan. 11.

KING, FREDERICK BENJAMIN, Gent., Charter House, Charter House-square, Middlesex. King *v.* Brown, V.C.W. Jan. 7.

PHELPS, JOSIAH, Stone Mason, Pierrepont-row, Islington. Mark *v.* Kent, M.R. Jan. 11.

REED, JAMES, Master Mariner, late of the merchant ship Hawatha. Rowell *v.* Rowell, M.R. Jan. 14.

RIMMER, WILLIAM, Gent., Garston, Lancashire. Rimmer *v.* Rimmer, M.R. Jan. 11.

SMITH, JOHN, Esq., Tanfield Lodge, Horsham, Sussex. Hartley *v.* Smith, V.C.S. Jan. 16.

TILBURY, JOHN, Job Master, Hatch End, Pinner, and 48, Mount-street, Grosvenor-square, Middlesex. Tilbury *v.* Tilbury, V.C.S. Feb. 1.

TURNER, SAMUEL, Master Bricklayer, Lavenham, Suffolk. Turner *v.* Turner, V.C.K. Jan. 30.

FRIDAY, Dec. 21, 1860.

ADDIS, TIMOTHY, 12, York-place, Stepney, Middlesex. Ewens, Solicitor, 61, Moregate-street, E.C., London. Feb. 17.

BRIGINSHAW, WILLIAM DAVIS, formerly Farmer, Amerden-farm, Taplow, Bucks, and late Gent., Huntercombe-cottage, Burnham, Bucks. Brown, Solicitor, Park-road, Maidenhead. March 1.

BROWN, JAMES, Innkeeper & Fishmonger, Newbiggin-by-the-Sea, Northumberland. W. & B. Woodman, Solicitors, Morpeth, Feb. 6.

BOSTOCK, DOROTHY, Widow, formerly of Stoke-upon-Trent, but late of Uttoxeter, Staffordshire. Hand, Solicitor, Uttoxeter. March 1.

BOSTOCK, LEWIS, Gent., Stoke-upon-Trent, Staffordshire. Hand, Solicitor, Uttoxeter. March 1.

DAVIS, JOHN, Merchant, Hounsditch, London, and of Hyde-house, Thorne-road, Clapham-park. Simpson, Samuel, & Emanuel, Solicitors, 31, New Broad-street, London. Jan. 18.

HART, MAURICE, Esq., 77, Gloucester-place, Hyde-park, Middlesex. Lindo, Solicitor, 17, King Arms-yard, Moorgate-street. Jan. 20.

LYGON, General the Honourable EDWARD PYNDAR, Spring-hill, Worcestershire, and 12, Upper Brook-street, Grosvenor-square, Middlesex. T. F. and H. Walford, Solicitors, 27, Bolton-street, Piccadilly. March 1.

MASON, SAMUEL, Saddler, Weaverham, Cheshire. Dunstan, Solicitor, Northwich. Feb. 1.

PAMPLIN, MARY, Toll Collector, Godmanchester, Huntingdonshire. Hunnybun, Solicitor, Huntingdon. Feb. 1.

YOUNG, ROBERT, Farmer, Knockholt, Kent. Withall, Solicitor, 7, Parliament-street, Westminster. Feb. 5.

Assignments for Benefit of Creditors.

TUESDAY, Dec. 18, 1860.

ASHWIN, EDWARD, Leather Factor, Birmingham. Dec. 4. *Sols.* Badham & Brookes, High-street, Tewkesbury.

BUCKLEY, JAMES, Spinner & Waste Dealer, Oldham. Dec. 3. *Sol.* Ponsonby, Oldham,

DAVIS, JAMES, Builder, 35, Upper Baker-street, Regent's-park, Middlesex. Nov. 22. *Sol.* Hackwood, Walbrook.

GREVE, JOHN HENRY, Music Seller, Kingston-upon-Hull. Nov. 21. *Sol.* Moxon, Lincoln's-inn fields.

HAMILTON, ROBERT PROUD, Farmer, North Otterington, Yorkshire. Dec. 12. *Sol.* Rider, Thirsk.

LAMPEN, THOMAS, Linen Draper, Alfred House, Newington-causeway, Surrey. Nov. 26. *Sol.* Baylis, Church-court-chambers, Old Jewry.

LYTHGOE, JOHN, Licensed Victualler, Warrington. Dec. 3. *Sol.* Stanley, Bank-street, Warrington.

MARSDEN, BESSY, Grocer, Trinity-street, Leeds. Nov. 29. *Sol.* Markland, Leeds.

MESSENT, CHARLES RAFFLE, Linen Draper, Croydon, Surrey. Nov. 20. *Sol.* Linklater, 7, Walbrook, London.

MORGAN, THOMAS, Grocer, Draper, & Ironmonger, Aberdare, Glamorganshire, and Trecastle, Breconshire. Dec. 3. *Sol.* Smith.

SCHUHMANN, SIGISMUND, Cotton Manufacturer, Burnley, and Manchester, and Bradford. Nov. 30. *Sols.* Langford and Marsden, 59, Friday-street, Cheapside; Sale, Worthington, Shipman, & Seddon, 29, Booth-street, Manchester.

SMITH, JAMES, Draper, Blaenavon, Monmouthshire. Nov. 27. *Sol.* Girling, 3, Small-street, Bristol.

WARDEN, THOMAS, Builder, Sheffield. Dec. 13. *Sol.* Marsh, Sheffield.

YOUNG, GEORGE, Baker & Shopkeeper, Bruton, Somersetshire. Nov. 27. *Sol.* Dyne, Bruton.

FRIDAY, Dec. 21, 1860.

BALLARD, HENRY, Watchmaker & Jeweller, Cranbrook, Kent. Dec. 12. *Sol.* Williams, Cranbrook.

BRAKE, MATTHIAS, Yeoman, Lydeard Farm, Broomfield, Somersetshire. Dec. 6. *Sol.* Pain, Bridgwater.

BURGESS, ALFRED, Farmer, Wortham, Suffolk. Nov. 28. *Sol.* Hazard, Redenhall, Harleston, Norfolk.

BUXTON, JOHN, Saw Manufacturer, Sheffield. Dec. 14. *Sol.* Unwin, 42, Queen-street, Sheffield.

DONNISON, JAMES, Underwriter, Lloyd's Coffee-house, London. Nov. 23. *Sols.* Cotterill & Sons, 32, Throgmorton-street.

DOWNES, WILLIAM, Baker & Grocer, Guildford, Surrey. Nov. 27. *Sol.* Lovett, Guildford.

HOLMAER, HENRY, Sugar Refiner, 13, Finch-street, Whitechapel, Middlesex. Nov. 26. *Sols.* Wright & Bonner, 15, London-street, Fenchurch-street.

M'CLURE, PETER, Shopkeeper, Wistanstow, Salop. Dec. 14. *Sols.* Kough & Son, Shrewsbury.

MOORE, JOHN SAMUEL, Cabinet Maker, 25, Curtain-road, Shoreditch, and 29, Bridport-place, Hoxton, Middlesex. Dec. 15. *Sols.* Hoppe & Boyle, 3, Sun-court, Cornhill.

NOWLAN, STEPHEN, Cooper, Pump-street, Oldham-road, Manchester. Dec. 10. *Sol.* Andrew, Manchester.

Bankrupts.

TUESDAY, Dec. 18, 1860.

COUSENS, THOMAS BAGLEY, Underwriter, Lloyd's Coffee-house, and 3, St. Michael's-alley, London. *Com.* Holroyd: Jan. 1, at 12; Feb. 5, at 1; Basinghall-street. *Off. Ass.* Lee. *Sols.* Linklater & Hackwood, 7, Walbrook, London. *Pet.* Dec. 17.

GEORGE, JOHN, Licensed Victualler, 101, Pemberton-row, London. *Com.* Holroyd: Jan. 1, at 2.30; and Feb. 5, at 2; Basinghall-street. *Off. Ass.* Edwards. *Sol.* Smith, 13, Tokenhouse-yard, London. *Pet.* Dec. 15.

HARRIS, THOMAS, Cabinet Maker, Cardiff, Glamorganshire. *Com.* Hill: Jan. 1, and Feb. 5, at 11; Bristol. *Off. Ass.* Miller. *Sols.* Bevan, Girling, & Press, Bristol. *Pet.* Dec. 6.

INGS, PHILIP, Artificial Manure Manufacturer, Moretown Ringwood, Hants. *Com.* Fonblanque: Jan. 2, at 1.30; and 29, at 12.30; Basinghall-street. *Off. Ass.* Stansfeld. *Sols.* Morris, Stone, & Co., Moorgate-street-chambers, London. *Pet.* Dec. 15.

ROBSON, GEORGE, Saddler, Handsworth, Staffordshire. *Com.* Sanders: Jan. 7, and 28, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Hodgson & Allen, Birmingham, or Caldicot & Canning, Dudley. *Pet.* Dec. 14.

SELLARS, JOHN, Manufacturing Chemist, Newton-heath, Manchester (John Sellars & Co.), Jan. 3 and 22, at 12; Manchester. *Off. Ass.* Pott. *Sols.* Kershaw & Bullock, Manchester. *Pet.* Dec. 11.

STARK, CHARLES, & WILLIAM STARK, Corn and Cheese Factors, Mark, Somersetshire. *Com.* Hill: Dec. 31, and Jan. 29, at 11; Bristol. *Off. Ass.* Acraman. *Sols.* Clark, Fussell, & Pritchard, Bristol. *Pet.* Dec. 8.

WILLIAMS, EDWARD, Builder & Joiner, Wrexham, Denbighshire. *Com.* Perry: Dec. 31, and Jan. 18, at 11; Liverpool. *Off. Ass.* Bird. *Sols.* Jones, Wrexham, or Evans, Son, & Sandys, Liverpool. *Pet.* Dec. 12.

WILLIAMS, WILLIAM NEWLAND, Chemist & Hop Planter, Farnham, Surrey. *Com.* Holroyd: Jan. 1, at 2; and Feb. 5, at 12; Basinghall-street. *Off. Ass.* Lee. *Sols.* Dynes & Harvey, 61, Lincoln's-inn-fields. *Pet.* Dec. 17.

YOUNG, FREDERICK, Woollen Warehouseman, 29, Basinghall-street, London. *Com.* Fonblanque: Jan. 2, at 12.30, and 29, at 12; Basinghall-street. *Off. Ass.* Graham. *Sols.* Linklaters & Hackwood, 7, Walbrook, London. *Pet.* Dec. 13.

FRIDAY, Dec. 21, 1860.

BROOKS, JAMES, & SAMUEL PITTS, jun., Wholesale Ironmongers, 38, Upper Thames-street, London. *Com.* Goulburn: Dec. 31, at 11; and Feb. 4, at 12; Basinghall-street, London. *Off. Ass.* Pennell. *Sol.* Yonge, 151, Strand, London. *Pet.* Dec. 10.

DODD, GEORGE, Shoe Dealer, Tunstall, Staffordshire. *Com.* Sanders: Jan. 10, and Feb. 2, at 11; Birmingham. *Off. Ass.* Whitmore. *Sols.* Smith, Birmingham, or Harding, Burslem. *Pet.* Dec. 19.

FOULKES, HENRY, Cab and Omnibus Proprietor, & Hackneyman, 32, John-street, Union-street, Kennington-road, Surrey. *Com.* Goulburn: Dec. 31, at 2.30; and Feb. 4, at 12.30; Basinghall-street. *Off. Ass.* Pennell. *Sol.* Grant, 37, Nicholas-lane, London. *Pet.* Dec. 18.

GRAY, JOHN, & JOHN ROBERT HENSON, Upholsterers, Undertakers, & Builders, Epsom, Surrey (Gray & Henson). *Com.* Holroyd: Jan. 1, at 3; and Feb. 5, at 2; Basinghall-street. *Off. Ass.* Lee. *Sol.* Michael, 7, Old Jewry, London. *Pet.* Nov. 8.

GRIMMETT, GEORGE, Corn Dealer & Commission Agent, Birmingham. *Com.* Sanders: Jan. 14, and Feb. 11, at 11; Birmingham. *Off. Ass.* Whitmore. *Sol.* Smith, Birmingham. *Pet.* Dec. 20.

HINDLE, THOMAS, Builder & Timber Dealer, Everton, Lancashire. *Com.* Perry: Dec. 31, & Jan. 33, at 11; Liverpool. *Off. Ass.* Cazenove. *Sol.* Yates, jun., 22, Fenwick-street, Liverpool. *Pet.* Nov. 16.

HODGSON, JAMES LEYLAND, Money Scrivener, Manchester. *Com.* Jemmett: Jan. 3 & 30, at 12; Manchester. *Off. Ass.* Hernaman. *Sols.* Thomas & Wharton, Dickinson-street, Manchester. *Pet.* Dec. 19.

RIDER, WILLIAM, Provision Dealer & Grocer, Tunstall, Staffordshire. *Com.* Sanders: Jan 10, and Feb. 2, at 11; Birmingham. *Off. Ass.* Kinnear. *Sols.* Smith, Birmingham, or Harding, Burslem. *Pet.* Dec. 18.

SAMPSON, WILLIAM, Innkeeper & Maltster, Saint Thomas the Apostle, Highampton, Devonshire. *Com.* Andrews: Jan. 3, and 30, at 11; Exeter. *Off. Ass.* Hirtzel. *Sol.* Terrell, Exeter. *Pet.* Dec. 13.

SCHENCK, JOHN JACOB, Merchant, 179, Gresham House, Old Broad-street, London (John J. Schenck, & Co.) *Com.* Holroyd: Jan. 8, and Feb. 12, at 12; Basinghall-street. *Off. Ass.* Lee. *Sols.* Venning, Naylor, & Robins, 9, Tokenhouse-yard, London. *Pet.* Dec. 11.

STRACHAN, JOHN, Common Brewer, Newcastle-upon-Tyne. *Com.* Ellison: Jan. 8, at 11.30; and Feb. 12, at 12; Newcastle-upon-Tyne. *Off. Ass.* Baker. *Sols.* Scaife, Royal-arcade, Newcastle-upon-Tyne; or Bolding & Simpson, 17, Gracechurch street, London.

WILKINS, FREDERICK, Egg Merchant, 4, Gloster-terrace, New-road, Whitechapel-road, Middlesex. *Com.* Holroyd: Jan. 8, at 2.30; and Feb. 12, at 2; Basinghall-street. *Off. Ass.* Edwards. *Sol.* Simpson, 13, Wellington-street, London-bridge, London. *Pet.* Dec. 12.

WILKINSON, GEORGE, Joiner & Builder, Macclesfield. *Com.* Jemmett: Jan. 3 and 23, at 12; Manchester. *Off. Ass* Fraser. *Sols.* Parrott, Colville, & May, Macclesfield. *Pet.* Dec. 19.

WINTER, JAMES, Surgeon & Apothecary, Rosslyn-terrace, Hampstead. *Com.* Evans: Jan. 3, at 1; and 31, at 12; Basinghall-street. *Off. Ass.* Johnson. *Sol.* Stopher, 36, Coleman-street, City. *Pet.* Dec. 20.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, Dec. 18, 1860.

DICKINS, WILLIAM, Shoe Manufacturer, Daventry, Northamptonshire. Jan 9, at 11; Basinghall-street.—DOYLE, PETER, Sail Maker, 74, Wapping-wall, Middlesex. Jan. 10, at 11; Basinghall-street.—EDMONDS, WILLIAM HENRY, Horse Dealer, Miller, and Baker, Wroughton, Wilts. Jan. 10, at 11; Bristol.—HANCORN, THOMAS, Timber Merchant, Hereford. Jan. 16, at 11; Birmingham.—HEAD, SAMUEL, Upholsterer and Furniture Dealer, Woodbridge, Suffolk. Jan. 12, at 1; Basinghall-street.—HOPKINS, ALFRED EDWARD, Law Stationer, 20, Gresham-street, London, and Shrewsbury. Jan. 10, at 12.30; Basinghall-street. JONES, JOHN WILSON, Commission Merchant, Liverpool. Dec. 31, at 11; Liverpool.—PEREIRA, SILVANO FRANCISCO LUIS, and JOHN GRANT, Wine Merchants, 91, Great Tower-street, London (Pereira and Grant). Jan. 10, at 1; Basinghall-street.—PITT, WILLIAM, Hosier, 11, Bishopsgate-street, Without, London. Jan. 10, at 2; Basinghall-street.—RUSSELL, JOHN THOMAS, Linen Draper, Northampton. Jan. 8, at 1; Basinghall-street.—STARKEY, JAMES, Builder, 75, Horseferry-road, Westminster, Middlesex. Jan. 15, at 1; Basinghall-street.—WAMSLEY, PHILIP, THOMAS HAMMERSLEY, and FREDERICK HAMMERSLEY, Silk Manufacturers, Leek, Staffordshire (Wamsley, Hammersley & Co.). Feb. 1, at 11; Birmingham.—WATTS, WILLIAM, Builder, Southam, Warwickshire. Jan. 16, at 11; Birmingham.—WHITE, ROBERT DENNIS, and JOHN GREGORY, East India Army Agents and Bankers, 11, Haymarket, Middlesex. Jan. 1, at 2; Basinghall-street.—WILLIAMS, JOHN, Chemist, Druggist, Printer, Bookseller, and Stationer, Horsley Heath, Tipton, Staffordshire. Jan. 24, at 11; Birmingham.—YOUNG, WILLIAM OGSTON, Ship and Insurance Broker, Underwriter, and Merchant, 4, Sun-court, Cornhill, London, also 54, Cross-street, Manchester, and of 19, Dale-street, Liverpool. Jan. 15, at 1: Basinghall-street.

FRIDAY, Dec. 21, 1860.

ATACK, SAMUEL, Builder, Leeds. Jan. 11, at 11; Leeds.—FULFORD JOSEPH, Brewer, Manchester. Jan. 12, at 12; Manchester.—GUTKIND, MAXIMILIAN, Merchant, 39, Noble-street, London (M. Gutkind & Co.). Jan. 11, at 1; Basinghall-street.—TURNBULL, EDWARD, Shipowner, West Hartlepool. Jan. 11, at 12; Newcastle-upon-Tyne.—WARD, ROBERT CLARKE, Linen Draper, Queen's-terrace, Marlborough-road, Chelsea, Middlesex. Jan. 11, at 12.30; Basinghall-street.—WRIGHT, WILLIAM, Cattle Dealer, Fulshaw, Chester. Jan. 24, at 12; Manchester.

We cannot notice any communication unless accompanied by the name and address of the writer

* * *Any error or delay occurring in the transmission of this Journal should be immediately communicated to the Publisher.*

THE SOLICITORS' JOURNAL.

LONDON, DECEMBER 29, 1860.

CURRENT TOPICS.

The Lord Chancellor's dissertation upon long judgments, and upon the importance of having them written in complicated cases, has given rise to a discussion in the morning journals of a more animated character than is generally produced by extra-judicial observations in the Court of Chancery. It is not often, however, that a Lord Chancellor takes to task one of his judicial subordinates for the manner and style in which he delivers his decisions—decisions, moreover, which are in themselves the subject of general admiration. The *Times*, in a leading article upon the subject, while admitting the distinguished judicial ability of Vice-Chancellor Wood, agrees in the main with what Lord Campbell has said, and finds no fault with the occasion or the manner in which the lecture was delivered. The *Daily News*, on the other hand, is of opinion that not only should every judge be permitted, without observation, to deliver his decisions in a manner most consistent with his own habits of mind, and, therefore, most likely to be conducive to a good result; but that the Lord Chancellor—having no right by virtue of his office, and being hardly qualified by reason of his comparative inexperience in the business of the Court of Chancery—ought not to make a public statement which must necessarily be hurtful to the distinguished judge against whom it is directed. It has also been remarked that extra-judicial observations of such a character, by one member of the court upon another, are likely to lead to unseemly personal dissensions in open court, and, therefore, that they tend to interfere with that judicial calm which is essential to the even course of justice. We have not thought it right or becoming in us to offer any opinion whatever upon either the right or the good taste of the Lord Chancellor, in publicly making the observations which have been the subject of so much comment. We believe, however, that the general feeling of both branches of the profession is opposed to an over elaboration of judgments, and is in favour of having them committed to writing by the judge, in important cases—where it is desirable that the decision should be expressed with that caution and preciseness of language which is sometimes necessary in discussing questions of law, and which is scarcely ever attainable by extempore speakers.

Mr. Henry Thring has been appointed to succeed Mr. Coulson as parliamentary draftsman to the Home Office—at least, such is the form of the announcement which has appeared in an official journal. There is no intimation whether this appointment is to be considered as indicating an adherence on the part of the Government to the hap-hazard, unsystematic, but most expensive, procedure which it has adopted for many years past. It is well known that although Mr. Coulson nominally had the duty of preparing the Bills not only of the Home Office but of those of most of the other departments of Government, the greater part of the work was in fact done by other draftsmen specially employed for the purpose. Thus to Mr. Thring himself we are indebted for the numerous joint stock companies Acts and Bills for the last five years; and if it were necessary to go through a list of other important measures proposed to Parliament during the same time, by members of the Government, with the preparation of which Mr. Coulson had notoriously nothing to do, we might enumerate the great majority of Bills of any importance before Parliament during that period. We shall content ourselves by reference—merely for the sake of illustration—to Lord Chelmsford's Debtor and Creditor Bill, the numerous Bills relating to land transfer, introduced by Lord Brougham, Sir Richard Bethell, and Sir Hugh Cairns, and the Bankruptcy and Insolvency Bill of last session. If, therefore, the old system, or rather want of system, is to be adhered to, the probability is, that Mr. Thring will have less to do in the preparation of Bills for the Government, now that he is the official draftsman than he had when he was employed as occasion required. We have long urged upon the Government the necessity for greater attention to the machinery of legislation, and the vast importance of adopting a good system in the preparation of Bills. We are convinced that indirectly the consequent gain to the country would be very large, while the direct saving would not be inconsiderable. It seems to be generally felt on all hands, that something must be done for the improvement of legislation by private Bills, and various proposals have been made upon this subject, with which our readers are familiar. We now allude to the appointment of Mr. Thring merely for the purpose of expressing our hope that the Government do not intend to adhere to the miserable system which has hitherto proved the source of infinite embarrassment and vexation to lawyers, and, in addition to these, of no little disgust, and of very great expense, to the public. Plans of reform without number have emanated from commissions, parliamentary committees, and private individuals; and surely amendment in this respect is not so impracticable as to be considered hopeless by the executive. Not only the profession but the general public will, therefore, be bitterly disappointed if it should turn out to be the fact that, after all that has been said to the Government upon this important subject, there is no intention at present to attempt any improvement; but that, in the teeth of all that has been written and said upon the subject, the old and expensive system of irresponsibility and hap-hazard, with all its baneful results, is still to be continued in full play.

We present our readers, this week, with a Sheet Almanack for the new year. It is intended to be useful in lawyers' offices, and is embellished by a handsome woodcut of the New Library of the Inner Temple, which has just been completed. The first stone of this building was laid by the late Sir Fortunatus Dwarris, on the 15th of August, 1858. The following description of it is taken from a recent number of *The Builder*:—"The principal floor—the library proper, which may be called 96 feet long, including the oriel, 42 feet wide, and 63 feet in height, to the under-side of the ridge, is covered with a hammer-beam roof, after the fashion of that in Westminster Hall. In fact, when it is looked at from the south end, the window in the north end, not seen in our view, being also very like the great window in Westminster, the likeness is disagreeably striking. The library is warmed with Perkins' hot-water pipes, and the floor is laid with cement, in stone margins. The side windows and that in the northern end are filled with stained glass, by Messrs. Ward. The latter, containing the arms of Templars, is a rich piece of colour. Below the library are two stories, introduced as a commercial speculation, with more advantage in a pecuniary point of view than to the appearance of the building externally. These chambers are not, as is generally supposed, for the temporary reception of persons overcome in the library by the somnific influence of study; but will be let to any parties who wish to reside or carry on business in the

Temple. Mr. H. R. Abraham is the architect, Mr. Geo. Myers the contractor, The carving was executed by Mr. Ruddick. The building is wholly of Bath stone externally; and the cost, including the book-cases, will be something under £13,000."

The admirers of Mr. Edwin James had the satisfaction a few weeks ago, of seeing him portrayed at full length in the dress of a bandit chief, in the *Illustrated London News;* there was something of genius in that effort to intensify the common place. About the same time they had the pleasure of perusing a production of his pen taken up at some interval when his hand had leisure from the sword or the pistols which decorated his ample belt. That celebrated epistle breathed a military fervour which will not soon be forgotten. It is not surprising, therefore, that the Marylebone Institution in Edward-street, Portman-square, should have asked Mr. E. James to deliver a lecture descriptive of his campaigns; although, perhaps, the public were hardly prepared to find that Mr. E. James was ready, on so short a notice, to enlighten the world on "The Revolutions of Europe, their Origin and Results!"

No less, however, is the title under which he has announced his lecture, which is to come off on Thursday week. The topic affords more room for comment than we can spare in this narrow compass, or probably than Mr. James will find that he can well manage in the course of an hour or two at the Marylebone Institution.

TAXATION OF SUITORS AND LEGAL FINANCE.

The great measure of concentrating the law courts and offices, now happily about to be accomplished, will necessitate a review of two subjects, each most important to the profession and its clients; and each demanding much more comprehensive and scientific treatment than it has hitherto received. These two subjects are—first, the taxation of the suitors; and secondly, the banking and financial arrangements of all the judicial establishments superior and local.

The solicitors, as the keepers of the suitor's purse and accounts, are the persons best able to form correct opinions on these two subjects. Their interest is identical with that of the clients. As it was well put at one of the annual meetings of the Metropolitan and Provincial Law Society a year or two ago—"If we are honest, it is our duty to protect our clients from over taxation; but even if we were rogues, it would be our interest to let nobody rob them but ourselves." As the body of solicitors will probably take a serious part in the discussion of these two subjects, which we conceive must ensue on the passing of the Concentration of Courts Bills, we propose in this and some future articles to go over the leading points of each of them.

The first of these subjects involves the following questions:—1st. How far suitors should be taxed if at all? 2nd. Whether every law-tax now levied has not now become a state tax, and one, therefore, which should be voted annually by Parliament, and form part of the annual budget, and be entirely removed from the management of the Judges? 3rd. The incidence of the tax, and whether it should not rather be a property than a poll-tax? 4th. Should not the method of collecting the tax be one for all courts (as it is now for two or three only), *e.g.*, by a law stamp as in Chancery or the Probate Court, and what method is the best? 5th. Should not the supervision of this branch of taxation, and the preparation of the annual budget upon it, be entrusted to some one office of Government in connection with the Treasury, so as to insure Parliamentary responsibility for a due, uniform, and well-considered action in the matter? And 6th. Whether the civil judicial statistics, now for the first time wisely issued by the Government, ought not to contain an annual summary and balance-sheet—a map, as it were, of the whole area of legal taxation and finance?

The second of these two great subjects—viz., the banking transactions and commercial finance of every court—involves the following questions:—1st. As the transactions of courts under this head are not (to use the expression of one of the witnesses on the late commission) vital to the existence of property as the decisions on questions of title and right are,—should there not always be some profit to the State for discharging, through its courts, these functions? 2nd. If so, should not this profit go in aid of any taxes which may have to be imposed for the maintenance of the judicial establishment? 3rd. However wise it may be to keep separate courts of law, equity, bankruptcy, and so on, ought not there to be a fusion of the finance offices of all the courts, and should not one consolidated banking office do the work for all the courts? 4th. Would it not be better to depute this work to the Bank of England; and at any rate, is it prudent to keep up such an establishment as that of the Chancery Accountant-General? 5th. Would it not be wise to establish a state deposit account, and to receive, at a low rate of interest, monies paid into court, as stakeholders, instead of compelling temporary investments in the funds, or the entire loss of interest? 6th. How far other offices and establishments of the State cannot be called in aid of the judicial establishment; *e.g.*, whether such small sums as county courts have to receive by way of deposit could not be received by the Money Order Office? 7th. The forms of monetary orders, and method of court account keeping (now diverse throughout the law), also require full investigation.

These are some of the points which require consideration in any discussion on the "Taxation of Suitors." Our last number, however, contained a very lengthy paper, with that title, read before the Juridical Society, by Mr. S. Martin Leake. The subject is a great and most shamefully neglected one; but the paper we refer to, instead of being the hearty outpouring of indignation at such neglect, was more like the set thesis of one who wrote on it because he must write on something. The only opinions he quoted in his paper are those of two Judges. These opinions were successfully combated by others in the very report which he had before him; and such counter-views should have been in common justice also stated. Probably Mr. Leake was not aware of the three important reports of the Committee of the House of Commons on Fees of Suitors (1847, Par. paper, No. 643; 1848, Par. paper, 158; and 1849, Par. paper, 559), or of the article in the first volume of the *Law Review* on the Legal Budget, which gave rise to those Committees. Had he known of them, he could hardly have reconciled himself to omit all mention of the fact that it is mainly to the efforts of solicitors (now extended over the last fifteen years) that the subject owes its original investigation, and the elucidation it has since received.

The Juridical Society, we believe, does not admit a solicitor in its ranks. This may be all very well, but, in our opinion, the bar and the Judges do not deal in the way that such a body should deal with the rightful claims of solicitors to priority of action and discovery on some questions of juridical science. The last Chancery commission was almost entirely a bar commission. The Lord Chancellor refused to put a single solicitor upon it. The great question which the Commissioners dealt with was the abolition of the assistant judicial office of Master in Chancery; and a truly great question it was. But neither in their report, nor in the appendix of evidence, did the Commissioners mention the receipt from the Law Institution of a full, thoroughly detailed, report, signed by twenty-nine of the most eminent solicitors practising in the Equity Courts, proposing to them the very measure which they ultimately advised (see Par. paper, 1852, No. 216). Still less did they state, as that paper points out, that "in 1841 the same view

in all material respects was advanced by a solicitor, at that time actively engaged in attempting to promote Equity Reforms in papers published in the *Legal Observer*, in January and February, 1841, where the question is discussed with great ability, and the necessity of the change established."

We do not call this sort of work plagiarism—but neither do we call it altogether gentlemanly dealing. We shall have on a future occasion to mention Mr. Leake's paper, and will therefore only add, that while it professes to be a paper on the "Taxation of Suitors," it deals only with the single question suggested above as the first query under our first head; all the rest he ignores.

The Chancery Commission never completed its labours, but died, we suppose, of inanition—certainly not of repletion. It never got so far as to consider the question of the Accountant General's Office and the Banking department; upon which question the Solicitors' Report contained some most important and able suggestions, touching on many of the points above mentioned. On all or any of those points we now ask for practical communications from the profession, it being clear that the time for action is near at hand.

THE LAW OF JUDGMENTS (23 & 24 VICT. c. 38).

The observations of Q. upon the criticism of Lord St. Leonards' Act to further amend the law of property, which appeared *ante*, p. 44, require to be considered in somewhat of extended detail. The article to which Q. alludes, together with the very practical paper of Mr. Johnson, *ante*, p. 13, may be considered as a tolerably complete commentary on the present law of judgments. The present observations, therefore, being rather supplementary than essential to a general view of this complicated branch of law, may best follow the order of Q.'s pointed comments.

The recent Act contains no provision for the re-registration of judgments or executions; that is, it does not render re-registration imperative, as the analogous quinquennial re-registration of judgments is directed and rendered imperative by the 2 & 3 Vict. c. 11. But one registration must not be necessarily presumed to exhaust the statute. A judgment must be revived every twenty years to bind the conuzor, and re-registered every five years to bind a purchaser from the conuzor; but it might be revived and re-registered continuously if the conuzee should so choose. Registration is prescribed as the indispensable concomitant of execution; as often, consequently, as an execution can be issued, so often may the statutory incident of this registration be attached to it. Therefore, it appears both on principle and analogy that an execution may be issued and renewed every three months, and registered as often as it is issued. If the Act provided that all executions upon the judgment should be void after three months, unless re-registered, just as the 2 & 3 Vict. c. 11, s. 4 enacted that judgments should, as to purchasers, be void after five years, unless re-registered, the case would be different. But, as the Act is worded, a power of renewing this charge every three months appears to remain in the conuzee; the Act, also, implicitly, as it would seem, directing that the writ of execution should have three months to run. The Act is a specimen of legislation by wholesale and inference—a sort of argumentative enactment. Being the product of the Legislature, we must assume that it enacts whatever is necessary to render all its provisions operative to their full extent. Of course, the Act, as also these observations, apply only to the case of purchasers. As to the conuzor and his volunteer representatives, the old law remains intact, as it does also as regards judgments entered up before the 23rd July, 1860, even as to purchasers. A step under the last statute—such as the issuing and registering an execution—does not, if the sheriff return *nil*, restore the creditor to the rights which a judgment creditor had before the 23rd July, 1860. The judgment, of course, continues, as to the conuzor, unaffected by the recent Act, and, therefore, affects his after-acquired property. As to Q.'s third query, an execution could not, it would appear, affect property not in the county of the sheriff to whom the writ is directed. In reply to Q.'s 4th query, the issuing and registering a *fieri facias* would not affect a purchaser of freeholds. The Act was not intended to enlarge the powers, or increase the remedies, of a judgment creditor; and it reduces freehold to the nature of leasehold estates, but not to the nature of goods, in relation to judgments. Q. rightly considers that the article to which he refers recommends the constitution of judgments as plenary incumbering assurances, such as the Irish judgment mortgages are. This would be a step in the consolidation of the law. Codification is not grateful to the British mind; it is too radical and too much like theory. But if a well-defined statutory mode of incumbering land prevailed, it would tend to a simple form of assurances in ordinary cases of conveyance as distinguished from settlements, which always requires varied limitations. The laws that we already have need not be entirely cast away in any process of legal fusion; on the contrary, the sternest rules of the feudal common law may be accepted as a basis for a more elaborate superstructure, even as the grim lines and angles of the mathematician afford an outline for the embellishments of the painter.

Both registration and notice must concur, to render either of any avail as against purchasers. The register of judgments, however, is usually searched; and a search amounts to notice. This may, however, be avoided; and can only militate against the value of the estate to the purchaser when he goes himself into the market to sell the same estate, a contract for the sale of which he cannot then enforce upon an unwilling vendee who, in this particular transaction, either by search of the register, or otherwise, gets notice of unsatisfied judgments against the first vendor. Such a title cannot be enforced upon an unwilling purchaser, as explained *ante*, p. 13 (*vid. Freer* v. *Hesse*, 4 De G. M. & G. 495).

The observations of Q. are calculated to attract attention to the practical results of the recent Act, which has, indeed, accumulated registrations, although these, without notice, are inoperative, and have hardly any operation but in taxing borrowers, who have to pay ultimately for all expenses attending the securities for their loans.

The letter of W. R. H., which appeared in our columns last week, depicts in a forcible manner the mischief which has resulted from the indefinite character given to judgments by the various legislative experiments, to which they have been subjected. He concurs in opinion with Mr. Johnson, to whose paper we have before referred, in stating that "if it is right so severely to restrict judgment claims, as is done by the late Act, it is equally right, and incomparably more convenient, to relieve purchasers and mortgagees altogether from them." With this opinion, taken as a whole, we concur. The extinction of judgment-charges upon land would be better than a state of the law, which tends, by reason of its numerous and apparently provident enactments regarding judgments, to dissipate unduly the apprehensions of creditors, while its chief effect is to tax the landowner by the litigation which it provokes.

But, while we concur in the opinion of Mr. Johnson, W. R. H., and, we believe, the public generally, that the total abolition of the statutes constituting judgments a charge on land would be an amendment of the existing law; we must, at the same time, say, that such an amputation is not the character of reform that we prefer to see carried out. Landowners will encumber their land, and perhaps no mode of doing so should be prohibited. On the contrary, when a particular form of incumbering land has prevailed from a very remote period down to the present time, and has, consequently, been often the subject of judicial decision, we must assume, that the

legal nature of such incumbrances would be by this time clearly defined, if that process had not been disturbed by frequent interpositions of the legislature. The point at which we should begin to cut off the excrescences caused by legislation, rather than a total eradication of the stock itself, is, as appears to us, the object that should engage our attention. The Statute of Frauds has been said to have cost hundreds of thousands to suitors; yet though they have been, by reason of the ambiguity of the enactment, virtually taxed for the settlement of the law by judicial decisions, we should not wish to see that statute now repealed; as such a step would not compensate the victims of the statute, and would only, perhaps, render us open to an equally severe oppression from the ambiguity of the substituted enactment. We should prefer, therefore, the consolidation of the law of judgments to the extinction of all legal definition of these acts of record as charges upon land; but either alternative would be better than the present state of this branch of the law, which keeps judgments "hovering over the land," sometimes alighting successfully on their prey, and as often prevented from doing so. An additional reason for the preservation of this mode of incumbering land arises from the concise nature of the charge. A judgment is entered upon a cognovit at a small expense, and yet, by means of statutory incidents, it can operate as effectively as an expensive deed of mortgage. If, after the passing of the 1 & 2 Vict. c. 110, the laws relating to judgments had been left unaltered, they would by this time have become a common, because the most effectual mode of incumbering land, and so, perhaps, would to some extent have superseded mortgages and other species of incumbrances. No one, surely, will deny, that such a consummation would be a boon to the creditor for its security, to the debtor for its cheapness and freedom from liability to litigation, and even to the purchaser from its certainty and the consequent necessity of its being satisfied prior to his payment of the purchase-money. The existing ambiguity of the nature of these charges must entail, in every case of purchase, a special inconvenience upon professional men, who, as W. R. H. suggests, have to balance the inconveniences of the risk and the expense, one against the other. The seller and borrower, indeed, as a general rule, ultimately pay for the expense of making out title. All facilities, therefore, for deducing title, granted by the Legislature increase *pro tanto* the value to the owner of the estate for sale, and are, virtually, equivalent to the increase of its acreage. The price will remain unaffected; but the owner will not have to spend so much of it in making out title, as he is obliged to do at present. After the bargain is concluded, a net saving can, of course, in any state of the laws relating to title, be effected by the diligence of the purchaser's solicitor; and although the general incidence of law taxes, whether imposed directly as stamps, or indirectly, as consequent upon a faulty state of the law, is upon vendors and borrowers, as we have stated, it cannot at the same time be denied, that the purchaser does not invariably look far beyond the amount of purchase-money, and has frequently to pay what he had never calculated upon as his share of the expense.

We cannot concur with W. R. H. in the next proposition which he advances—viz., that if judgments should be charges upon one species of property, they should be charges upon every other kind of possessions. Indeed, our correspondent appears to err in his implied assumption—viz., that judgments are not charges upon goods and chattels.

Judgments *are* charges upon this class of possessions in the hands of the owners, and would be allowed by the Legislature to be charges upon goods even after sale in market overt, only that the general and paramount claims of commerce would be thus disregarded. The lien of a judgment upon property is a public advantage; but when it accidentally conflicts with a greater good, it is then disregarded in comparison with stronger claims. There is, therefore, no foundation for this part of the argument of W. R. H. Few would advocate the necessity of an action being instituted upon judgments entered upon cognovits. It would be a useless tax upon borrowers, who, as we cannot too often state, are the parties who ultimately pay for all means of enforcing the securities for their debts.

It is not, of course, desirable, that trade in land should be so entirely free, as that the claims of the creditors and incumbrancers of the vendor should be disregarded. Unless this be done, however, there is no use in proscribing judgments. A judgment, indeed, as W. R. H. states, does not operate as a check, at least a sufficient one, upon fraudulent debtors. Nevertheless, it is better to render the check effectual, than wholly to remove it. We should be disposed, contrary to W. R. H.'s opinion, to say, that very many estates are burdened with judgments; but there are no greater objections to judgments as charges upon land, than to incumbrances by mortgage, to which we desire to see judgments assimilated, and, consequently, as a cheaper mode of creating incumbrances, preferred. We have considered the letter of W. R. H. chiefly in its relation to general principles; and as the law of judgments now stands, his observations are pointed and useful.

It is to be hoped, however, that the law of judgments will be amended, and that, instead of being abolished, they will be constituted a standard mode of incumbering land.

The Courts, Appointments, Promotions, Vacancies, &c.

COURT OF QUEEN'S BENCH, Guildhall.

Second Court.

(Before Mr. Justice Crompton and a common jury.)

Dec. 21.—*Kain* v. *Mahood.*—At the conclusion of this case (in which a juror had been withdrawn,) a juror having expressed a wish to give the plaintiff his costs, Mr. Justice Crompton said, "it is very wrong for juries to think of costs at all. They are bound to give damages according to the circumstances. Costs sometimes follow the damages, and sometimes they do not, and sometimes they depend on the discretion of the judge. Juries ought to remember that they swear by their oaths to decide according to the evidence, and if they make the damages follow the costs they do not attend to their oaths."

Dec. 22.—*Solomon* v. *Noon.*—In this case the defendant had pleaded a tender, which brought from the judge the following caution:—

The learned Judge stated that Lord Abinger, 50 years ago, had said much about the difficulty of proving a tender, and he (Mr. Justice Crompton) had always told young men in pleaders' chambers never to plead a tender, but always to advise a defendant to pay the money into court. This would at once remove the difficulty of proving a tender; and if the plaintiff did not take the money out of court the amount would be deducted from the verdict by the jury. He feared that the only reason why money was not paid into court was to save a few shillings at an early part of the proceedings.

COURT OF COMMON PLEAS.

(Sittings at Nisi Prius, at Guildhall, before the Lord Chief Justice and a Special Jury.)

Dec. 20.—While some arrangements were being made for the settlement of a cause, a special juror addressed the learned judge, and expressed a hope that his lordship would have some consideration for himself and brother jurors.

The Lord Chief Justice replied,—I have from the very commencement of the sittings endeavoured to suit the convenience of both suitors and jurors; but I may tell you, sir, that the distinction between common and special jurors will shortly be done away with, and instead of being summoned for certain cases you will have to attend from the beginning of the sittings to the end.

ASSIZES.—Liverpool.

(Crown Court. Before Mr. Justice Keating.)

Dec. 21.—Previous to the commencement of the trial of a

man named Niel, and others, Mr. *Scott*, who appeared as counsel for one of the prisoners, addressing the Court, said that he thought it his duty to call his lordship's attention to a circumstance which had come to his knowledge with regard to the prisoner Niel. It appeared from statements made by that prisoner, which were confirmed by the officers of the gaol, that some person representing himself as an attorney, had obtained access to the prisoner, and had induced him to hand him over such money as the prisoner possessed, for the purpose of instructing Mr. Scott to defend him. That money Mr. Scott had never received, nor, indeed, had any communication been made to him on behalf of the prisoner, who then stood undefended.—His Lordship inquired whether the person referred to by the prisoner was in reality an attorney, as, if so, it was quite clear he would not long remain so.—Mr. *Higgin*, who appeared for the prosecution, replied, that he believed the person in question could be identified, and that he was not an attorney, but an attorney's clerk.—His Lordship said, he was glad for the honour of the profession to learn that the person who had been guilty of so atrocious a crime was not an attorney, and he was quite satisfied that when that person, whoever he might be, stood at that bar at the next assizes, as he had no doubt he would, he would receive the punishment which his offence so richly deserved.

Mr. Henry Thring, conveyancer, of Lincoln's-inn, has been appointed Parliamentary draughtsman to the Home-office, in the room of Mr. Walter Coulson, Q.C., deceased.

Mr. John Jones, of Dolgelly, in the county of Merioneth, has been appointed a commissioner to administer oaths in the High Court of Chancery in England.

Recent Decisions.

[*Equity*, by J. NAPIER HIGGINS, Esq., *Barrister-at-Law*; *Common Law*, by JAMES STEPHEN, Esq., LL.D., *Barrister-at-Law*.]

EQUITY.

WILL—IMPLIED GIFT TO EXECUTOR.

Juler v. *Juler*, M. R. 9, W. R. 61.

Previous to 11 Geo. 4, & 1 Will. 4, c. 40, executors were not precluded from claiming by virtue of their office a beneficial interest in the undisposed of personal estate of their testator; on the contrary, unless such a presumption were expressly negatived by the will, the executors were entitled to the beneficial interest. By that Act, however, the rule of law in this respect was reversed. Reciting that testators by their wills frequently appointed executors without making any express disposition of their personal estate; that executors so appointed became by law entitled to the whole residue of such personal estate; and that courts of equity had so far followed the law as to hold such executors to be entitled to retain such residue for their own use, unless it appeared to have been their testator's intention to exclude them from the beneficial interest therein, it was enacted that when any person should die after the 1st September, 1830, having by his will appointed an executor, such executor should be deemed by courts of equity to be a trustee for the next of kin in respect of any residue not expressly disposed of, unless it should appear by the will that he was intended to take such residue beneficially. The Act does not affect the rights of executors, where no person is entitled—where there is no next of kin. Except in the latter case, the effect of the statute is, therefore, as we have said, to reverse the rule which was previously observed by courts of equity; and according to the decision in the present case, the Court will not make any presumption in favour of an executor, unless where the will contains explicit evidence of the testator's intention to confer a beneficial interest on the executor. "What the statute meant to say," said Sir John Romilly, M.R., "was that the burden of proof lay on the executor to prove distinctly, from the testamentary instrument, that he was to take a beneficial interest." It appears that it is not enough that the will contains no other gift from which a general presumption in favour of the executor's claim might be supposed to arise; and the executor, therefore, in this case—although the only gift was to him—was held to be a trustee for the next of kin of the testator.

The cases in which the effect of a gift to executors has been considered, have nearly always been those in which the gift was to the executors not of the testator, but of some other person who was himself intended, if living at the death of the testator, to take beneficially under the will:—As to which see Hayes & Jarman's Concise Forms, 5th ed., pp. 161-163 (n).

COMMON LAW.

TENANT HOLDING OVER—ACTION FOR DOUBLE RENT.

Swinfen v. *Bacon*, 9 W. R., Exch., 105.

This was an action arising incidentally out of the celebrated case of *Swinfen* v. *Swinfen*, and was brought by the widow and devisee of the testator against one of the tenants of the Swinfen estate, who had retained possession (after receiving due notice to quit), in the interest and at the request of the heir-at-law, by whom the validity of the will was disputed. The chief point of interest, however, in the present case arises from its affording a useful reading of the statutable provision, under which the claim to recover "double rent" for the time during which the tenant so held over, was brought. This provision is that of 4 Geo. 2, c. 28, s. 1, which enacts that in case any tenant for life, or years, or other person claiming under or by collusion with such tenant shall *wilfully* hold over, after the determination of the term, and after demand made, and notice in writing given by him to whom the remainder or reversion of the premises shall belong for delivering the possession thereof, such person so holding over or keeping the other out of possession, shall pay for the time he detains the lands at the rate of double their yearly value. Now, the gist of the action given by this enactment lies in the word "wilfully;" but, in the present case, the tenant held over *bonâ fide*, believing that the premises belonged to a person other than the person from whom he had received notice to quit. And the Court of Exchequer unanimously were of opinion that to such a holding over, the enactment did not apply. To this result they were led by considering the principle of the Act and the evil it was passed to remedy. Its object was, to give landlords an additional safeguard against the danger of their tenants putting them at defiance, and retaining the premises against the will of the person entitled to their possession. In some of the cases upon the Act the expression used by the courts is, that the action lies only where there is clear "contumacy" on the part of the tenant; not if he holds over believing, on reasonable grounds, that he himself is entitled, or that another person has the right for whom he holds it against the person really entitled.

The Lord Chief Baron remarked in his judgment that "the very few instances recorded in which landlords have availed themselves of the assistance of this Act, is a very strong and gratifying proof of the general kindness and forbearance of landlords towards their tenants." This may be true enough. But the eulogium thus passed upon landlords is open to the obvious remark that it would have been just as easy to have ascribed the deficiency of cases upon this provision to the "general fairness and regard to their bargains, evinced by tenants towards their landlords." The certainty which the statute secures of having to pay a considerable penalty for the indulgence of mere obstinacy may be suggested as, perhaps, a more probable solution of the rarity of cases, than any extraordinary forbearance on the part either of landlord or enant.

COUNTY COURT LAW—JURISDICTION—COSTS UNDER 15 & 16 Vict., c. 54, s. 4.

Avis v. *Orchard*, 9 W. R., Exch., 106; *Warman* v. *Hallam*, *ib.*, B. C. 108.

These are two cases which should be noted up in books of county court practices—the first of them turning upon a principle of law; the other merely on a rule of practice.

In *Avis* v. *Orchard*, the question was, whether a contract is *divisible*? that is to say, can certain acts towards the making of a contract be done on one day, and the remaining acts to complete the contract, on a subsequent day; so as to fix the foreign district within which a plaint for its breach must be levied: it being required under 9 & 10 Vict., c. 95, s. 60, that the "whole cause of action" must arise within the district within which the trial is. In the present case, there had been a *verbal* agreement for the purchase of a horse (which could not have been sued on by reason of the statute of frauds) in district A, on a certain day, and on the next day an agreement for the purchase of the same animal in district B.: which last transaction complied with the statute, and comprised different terms from those entered into on the preceding day. The plaint was levied in district B, and the Court of Exchequer (the question arising upon a rule which had been obtained for a prohibition) held that it was rightly so brought. For, said the Court, "a contract is one entire act or thing; it is incapable of being divided so as to say that it consisted of two matters—one of which passed on one day, and another on another day." And again, "this is an endeavour to carry the cases, holding that

the whole cause of action must arise within the county court district, in certain cases, further than they have ever yet been carried by splitting the contract; this cannot be done—a contract is indivisible."

Warman v. *Hallam* was an application by a plaintiff (who had recovered in an action of debt, less than £20) for costs, under 15 & 16 Vict. c. 54, s. 4. On the argument of the rule *nisi* it appeared that a prior application had been made and refused at chambers, though the affidavits in support of the rule made no allusion to the circumstance.

Upon this the Court observed, that the application should have been made, if at all, by way of *appeal* from the decision at chambers, not by way of substantive application; and that, in consequence of this, the Court had nothing before them to enable them to decide whether the judge at chambers had been right or wrong in his decision.

Had due attention in this case been paid to the decision in *Heath* v. *Nesbitt* (11 Mee & W. 669), it would have avoided the defeat of the application—at all events on the ground on which the rule for costs was in fact discharged.

Correspondence.

COPYHOLD MORTGAGE.

Can you or any of your readers inform me the proper mode of discharging copyhold property which has been enfranchised, from a mortgage created prior to the enfranchisement by means of a conditional surrender, upon which admission has not been taken? Does not the 46th section of the Copyhold Act of 1852 make necessary a deed of reconveyance?

X. Y. Z.

V. C. WOOD AND THE CHANCELLOR.

I am sorry to observe that you do not in your leading article of to-day even express regret that the Lord Chancellor should have made such uncalled-for remarks on the most honoured of our Vice-Chancellors. Even if it were better to have had the judgment written, still such observations were uncalled for, unnecessary, and evidence of very bad taste.

The Lord Chancellor cannot but have inflicted pain on the most excellent of judges.

B. P. A.

PROFESSIONAL REMUNERATION.

Referring to "Hints to the Profession" in your Journal of the 8th, on the subject of our remuneration, I have frequently wondered why this subject has not more engaged the attention of the Law Society. The present system of making our charges is alike vexatious and annoying to the solicitor and the client. It is humiliating to us to have to state the subject matter of a letter to warrant a charge of five shillings; and to tell a long story as the subject matter of a charge of 6s. 8d. or 13s. 4d., to say nothing of the waste of time—first, in concocting the entry in the day-book; the accountant's time in posting it; the subsequent settlement of the bill for delivery; the copying it for delivery; and the copy for the fair bill book as delivered. A large proportion of our clients have not the patience to read through many folio pages to see how these trumpery charges have been earned, and regard the bill as a more or less ingenious manufacture.

Most men who are contemplating the purchase or sale of an estate, or the raising a loan on mortgage, naturally desire to ascertain beforehand what will be the cost. The only answer we can give under the present system is, "We cannot possibly say." That is not satisfactory. I have seen the plan suggested of a per centage fee, and I have not seen any sound objection to that mode of remuneration; which would, as it appears to me, be satisfactory to all parties. It seems to be in actual operation in Scotland. I had occasion recently to inquire the mode of remuneration adopted in Edinburgh, on a client proposing to make an investment on a mortgage of an estate in Scotland. Not then being conversant either with the Scotch law, or the professional practice in Scotland, I wrote to solicitors there for some information on the subject. I was informed that the law charges for conveyances and mortgages there were commuted for a commission of, so far as I remember, 1 per cent. in the one case, and 1½ per cent. in the other. Now, though such commissions may not, in some particular cases, be equivalent to our ordinary scale of charge in detail, yet, when the saving of time and trouble inseparable from the existing practice, the avoidance of all cavil and dissatisfaction of clients on charges they cannot duly estimate, and the comparative freedom and satisfaction with which they would engage in such transactions when they could exactly compute the cost beforehand, are considered, I am convinced the change would, on the whole be a beneficial one to the profession.

A Solicitor of nearly 50 years' standing.

Review.

Personal History of Lord Bacon; from Unpublished Papers. By William Hepworth Dixon, of the Inner Temple. John Murray, Albemarle-street.

Some years since, the present Lord Chancellor, then holding a less distinguished judicial position than that which he now fills, delivered a memorable judgment that seriously concerned the reputation of one who, renowned as a philosopher, was also eminent as a lawyer and a statesman. The case, which for some time appeared to be closed to discussion by his lordship's emphatic decision, has been re-opened; and by a higher and final court of appeal the adverse judgment is undergoing reversal. From the nature and constitution of the court the rehearing of the cause will still occupy many months; for although the judges of the tribunal, amounting in all to many thousands, and even tens of thousands, usually sit, each by himself, in solitary separation, and very rarely indeed attend to public business in numbers exceeding three at a time, every one of these important functionaries must examine the arguments and evidence of each case brought before their bench, and separately record his opinion upon it, before the ultimate order of reversal or confirmation can be declared. We need not add that we are alluding to the court of public opinion, and to the renewed discussion of the charges under which Lord Bacon's fame has long suffered, and upon which Lord Campbell, in his "Lives of the Chancellors," gave judgment against the accused, in terms that, to speak of his lordship's conduct with moderation, at least evince no wish to regard leniently the failings of a noble mind.

The vindicator of Bacon's reputation published not long since in the columns of a literary journal the outlines of the arguments which in his "Personal History of Lord Bacon," he has filled up with such a bulk of new evidence, and hitherto unpublished documents, and such a wealth of historic illustration, that the original articles and the present work bear only a faint family likeness to each other. A legal journal is not the place for a critical examination of all that Mr. Hepworth Dixon has to say, and all he has made known, with regard to the domestic fortunes and political labours of his hero. But that which relates to Bacon the lawyer especially concerns every member of his profession. Elsewhere we should willingly admit that to purge the author of the "Novum Organum" of the stains that have for centuries blemished his moral character in the eyes of the world, was a grander achievement than only to prove him an upright judge. But here we have nothing to do with the problems and paradoxes of morality. For all we in these columns care, Pope's line may be true or false; and Bacon may or may not have been "The wisest, brightest, meanest of mankind." Either way, we care not. But as lawyers, we have a peculiar feeling of interest in an endeavour—and, what is more, a successful endeavour, to prove—that Francis Bacon did not corrupt the fountains of justice And with especial force does this interest assert itself during the perusal of Mr. Dixon's pages, where the proofs of Bacon's judicial purity are the result of a careful search into the professional and social usages of the legal profession during the reigns of James the First, Elizabeth, and their immediate predecessors in the throne of England.

On both sides Bacon was favourably placed by birth for success at the bar, and in the arena of the House of Commons. The son of Sir Nicholas Bacon, he was, in his infancy, introduced to the ruling powers of the court, and ere he had ceased to lisp paid daily compliments to Queen Elizabeth, who, in return for his pretty homage, was wont to call him her little Lord Keeper. Through his mother he inherited associations that, to more pliant men, would have been the key to rapid success. Lady Ann Bacon, the Olympia Morata of Elizabeth's court, was one of five sisters—daughters of that fine old scholar who drugged King Edward with Latin, Sir Anthony Cook, of Giddy Hall, in Essex—all the five, pious and learned, as so many muses, but, unlike the muses, all were made happy wives: Mildred, by Lord Burghley; Ann, by the late Lord Keeper; Katherine, by Sir Henry Killigrew; Elizabeth, by Sir Thomas Hoby, and

next by John Lord Russell; Margaret, the youngest of the five, by Sir Ralph Rowlet. Thus, Francis Bacon claimed, through his mother, close cousinry with Sir Robert Cecil, with Elizabeth and Ann Russell, with the witty and licentious race of Killigrews, and with the future statesman and diplomatist, Sir Edward Hoby. Bacon, however, with all the advantages of his position, did not win speedy success. An education that confided him to Cambridge at thirteen, and carried him to Paris at sixteen years of age, placed him in Gray's-inn, a student of law, as early as the summer of 1580, a few months after his nineteenth year. From that date till he gained the custody of the seals, he never failed in attention to the study and practice of his vocation. If philosophy was his Rachel, law was his Leah. It was true that he found time to be conspicuous as a leader, and unrivalled as an orator in the House of Commons, and also to play a brilliant part in that galaxy of wit and splendour that surrounded the virgin queen. But he never at any time neglected his profession. And yet his advances to the highest preferment were slow. Nor is this to be accounted for by any carelessness for place on his part. On all fit occasions he sought office. On every occasion of his seeking office his claims were allowed to be worthy of attention. More than once preferment was within an ace of his grasp, the cup touched his lip, when suddenly the prize was snatched away, and the cup dashed down—by some malignant and unseen power, as distant spectators thought. In this respect Bacon was emphatically an unlucky man. Favoured by the queen, respected in Westminster Hall, supported by powerful friends, and possessed of every minor talent, as well as the fine proportions and subtle inspirations of genius, he was, in the race for social distinctions, repeatedly outstripped by plodding mediocrity or cunning folly. In the September of 1593, he had reasonable hopes of getting the vacant post of Attorney-General; but Coke stepped into it, leaving him to turn wishful eyes on the place of Solicitor-General, left void by Coke. For this appointment he had strong claims. "A bencher and reader of his inn, he enjoyed a good reputation in chambers and in the courts. The best judges at the bar approved his rise. Burghley and Cecil cautiously promoted his suit, and Egerton pressed it with a noble friendship on all who had power to help or harm. Yet in the end, Thomas Fleming got the post, a man only known to the world for having stood in Bacon's way, and to the profession for his singular and disastrous ruling in the case of Bates. Bacon owed this loss of place to Robert Devereux, Earl of Essex; out of which cruel disappointment to him springs the charge of ingratitude to a patron —treason to a friend." The light that Mr. Dixon has been enabled to throw on this memorable passage of Bacon's life deserves especial notice.

"The earl's want of tact and temper" (he says) "is more hurtful to his friends than his foes. He does Raleigh no great harm, he causes Bacon the most grievous loss. Give me this place of Solicitor—he drums and drums at the Queen's ear. She thinks her law officers should be chosen by herself, and for their good parts, not to please the fancy or make good the pledges of a carpet knight. She will not do a right thing for a bad reason, or in a wrong way. Her courts are crowded with able men. She is old enough to choose a servant for herself. As Essex grows hot, she cools; when he storms upon her and will not be denied, she turns from the spoiled boy, her nomination made. Bacon must wait. Fleming shall be her man.

"Lord Campbell says, as writers have said from the days of Bushel, that the Earl atoned to Bacon for his failure by a gift of Twickenham-park. It happens, however, that Twickenham-park was not, and never had been, the Earl's to give. That lovely seat, which blooms by the Thames, close under Richmond-bridge, fronting the old palace, and some of the elms of which stand, venerable and green, in the days of Victoria, had belonged to the Bacons for many years. In 1574, while Essex was a boy at Chartley, Twickenham-park, together with More Mead, and Ferry Mead, the adjoining lands, had been granted by the Queen to Edward Bacon on lease. The lease is enrolled, and a copy of it may be read in one of the appendices of this book. Francis lived in the house, as the letters prove, long before his patent of Solicitor passed the seal. . . . . Unable to pay his debt by a public office, Essex feels that he ought to pay it in money, or money's worth. The lawyer has done his work, must be told his fee. But the Earl has no funds. His debts, his amours, his camp of servants, eat him up. He will pay in a patch of land. To this Bacon objects; not that he need scruple at taking wages; not that the mode of payment is unusual; not that the price is beyond his claim. Four years have been spent in the Earl's service. To pay in land is the fashion of a time when gold is scarce, and soil is cheap. Nor is the patch too large; at most it may be worth £1,200, or £1,500. After Bacon's improvements, and the rise of rents, he sells it to Reynold Nicholas for £1,800. It is less than the third of a year's income from the Solicitor-General's place."

Having lost his chance on this occasion, Bacon had to wait many years for advancement. Elizabeth, contrary to the assertions of Basil Montague, Macaulay, and Lord Campbell, gave him many substantial proofs of her affectionate care for his interest. Besides the reversion of the registry of the Star Chamber, a post worth £1,600 a-year, a grant of land in Zelwood Forest, and other queenly gifts, she made him one of her counsel learned in the law; presented him with a reversion of a lease of Twickenham-park, and avowedly consulted him on important points in the law business of the Crown. But when the Queen died in 1603, he was, notwithstanding her good will to him and her good deeds, still fighting in the foremost ranks of the bar, untitled and unplaced. It was not till 1607, not until he had overcome the opposition to him at court with which the new reign opened, and had proved to James and to Cecil that the government of the country could not be carried on without his assistance, that he gained the first clear step in the official ladder, and was made Solicitor-General, on the 25th of June, 1607, at the age of forty-six years and five months. In 1613, he mounted to the Attorney-General's place. In the March of 1617, he was entrusted with the custody of the seals; and in the January of 1618, the Lord Keeper attained the higher grade of Chancellor.

"In the July of the same year he becomes a peer. His slanderers sink beneath his feet. No severity seems to the Privy Council too great for those, however high in rank, who menace his person or dispute his justice. For a saucy word they send Lord Clifton to the Fleet; for a complaint against one of his verdicts they commit Lady Ann Blount to the Marshalsea. In 1620, he publishes his "Novum Organum"—a book which has in it the germs of more power and good to man than any other work not of divine authorship in the world. He is now at the height of earthly fame. First layman in his own country; first philosopher in Europe—what is wanting to his felicity? Neither power, nor popularity, nor titles, nor love, nor fame, nor obedience, nor troops of friends. All these he has—no man in greater fulness. If his heart has other longings, he has only to express his wish. In January, 1621, he receives the title of Viscount St. Albans, in a form of peculiar honour—other peers being created by letters patent, he by investiture with the coronet and robe.

"Yet only seven months after printing the 'Greatest Birth of Time'—only three months after receiving in the King's presence the robe and coronet—he is stripped of his honours, degraded from his place, condemned to a monstrous fine, and flung into the Tower.

"The tale of this fall is the most strange and sad in the whole history of man."

No common praise is due to Mr. Dixon for the learning and logical precision with which he describes the internal construction of the great machine that so suddenly brought down the Chancellor from his place, and measures out to each person concerned in the drama—puppet or string-puller—his proper amount of pity or condemnation. We cannot do better than give, in the author's own words, the leading passages of the story.

"In striding over Coke's head to the mace and seals, Bacon puts the crown to his many offences against that wealthy and vindictive foe. Their lives have been spent in a daily contest for rank, love, place, and power. Up to the present year, Coke has been able to keep in front. He made more money; he won Lady Hatton; he first got office under the Crown. He went up to the Common Pleas, while Bacon was fighting for his promotion at the bar. Before the great philosopher was commissioned as Attorney-General, the great jurist had been seated on the King's Bench. For the three years and four months that Bacon, as Attorney, waited in the council anteroom, Coke sat at the board. The scene is now changed, the characters reversed. Within a few weeks, Coke has been degraded from the council to make way for Bacon, and reduced from the King's Bench that his rival may feel the insolent joy of refusing to accept his place. The humiliation has now been capped by Bacon filching from him, at the very moment of his negociation with Villiers, the mace and seals, without paying for them one shilling of those irregular sums which he himself was told he must lay down. Such a success enrages the miser even more than it galls the man.

"How can he drag this rival down? The way is but too easy. Gain the favourite. Virtue is no protection to men in power. He has been thrown. Egerton only escaped an ignominious fall by the approach of death. The story of Egerton's latter days has never yet been told. As an illustration of the time, it is in the highest degree important for a clear comprehension of his successor's fall.

"As Egerton grew old, a host of lawyers and ecclesiastics began to crave the seals; conspicuous among these were Bilson and Bennet, Hobart and Coke. . . . . As Egerton would not die, though he had held the seals longer than any Chancellor since the Conquest, nor yield his place except on reasonable terms of surrender, those who meant to make a purse by the transfer began to brood over the possibility of forcing him to yield by means of a criminal prosecution. A sentence in the House of Lords would be legal death. Once it were pronounced the seals would fall into the king's gift. This was a new and perilous game to play; but the plan seemed easy, the profits vast. A trial might be made. Any old lawyer, learned in the vices of the times, could get up an accusation. Buckingham could secure a majority in the House of Lords. The temptations which drew Buckingham into this odious and criminal course were very great. Sir John Bennet offered for the seals no less a sum than thirty thousand pounds."

All was ripe for a criminal prosecution of the aged chancellor. If the intelligence of the conspiracy against him was the final blow that laid him in his coffin, still the grave protected him from Villiers and his associated thieves. Death, however, did not play the desired part for them. The chancellorship was left vacant, but not for them to put up to auction. Without paying a single coin of blackmail to the marauders of St. James's, Bacon obtained the seals, and bade fair to keep them. Maddened with disappointment the gang saw that their only hope of plunder lay in reviving against Bacon the conspiracy they had nursed against Egerton. In the malevolence of Coke, and the chicanery of John Churchill, a perjured rascal who has altogether escaped the notice of historians previous to Mr. Dixon, the gang had instruments in every way fitted for their use. All that was required to be done was, for an outside rabble to declare that Bacon's lawful fees were bribes accepted for the corruption of justice, and for Buckingham's creatures in the House of Peers gravely to assent to the astounding proposition. Nor will any one acquainted with the critical position of judges at the time of Bacon's fall be surprised at the success of the plot. Mr. Dixon observes:—"To see why the threat of prosecution so deeply disturbed Egerton, and how easy it may be for unscrupulous men to frame a charge of corruption against his successor, a reader who is not a lawyer should remind himself of the state of society in the days of James the First.

"There is no civil list. Few men in the court or in the church receive salaries from the Crown; and each has to keep his estate and make his fortune out of fees and gifts. The King takes fees. The archbishop, the bishop, the rural dean take fees. The Lord Chancellor, the Lord Chief Justice, the Baron of the Exchequer, the Master of the Rolls, the Attorney-General, the Solicitor-General, the King's Serjeant, the Utter Barrister, all the functionaries of law and justice, take fees. The Lord Admiral takes fees. The Secretary of State, the Chancellor of the Exchequer, the Master of the Wards, the Warden of the Cinque Ports, the Gentlemen of the Bedchamber, all take fees. Everybody takes fees, everybody pays fees.

"In some public offices and courts the amount to be paid is fixed, either by ancient usage or by such a common understanding as in modern times controls a railway or steamboat fare. In some, particularly in the courts of justice, it is open. Bassanio may present his ducats; three thousand in a bag. The judge may only take a ring. A fee is due whenever an act is done. The occasions on which, by ancient usage of the realm, the king claims help or fine, are many; the sealing of an office or a grant; the knighting of his son; the marriage of his daughter; the alienation of lands *in capite*; his birthday, new year's day; the anniversary of his accession or his coronation; indeed at all times when he wants money and finds men rich enough and loyal enough to pay. In like manner the clergy levy tithe and toll; fees on christenings, fees on churchings, fees on marriages, fees on interments, Easter offerings, free offerings, charities, church reparations, church extensions, pews, and rents.

"In the Government offices it is the same as in the palace and the church. If the Attorney-General, the Secretary of State, the Lord Admiral, or the Privy Seal puts his signature a sheet of paper, he takes his fee. Often it is his means of life—to wit, the retaining fee paid by the king to Cecil, as Premier Secretary of State, is a hundred pounds a year. But the fees from other sources are enormous. These fees are not bribes.

"The same at the bar and on the bench. The bar is a free profession: a member of the Temple or of Lincoln's-inn being bound to plead, as the knights, whose swords are rust, were bound to fight, in love and faith, taking no purse nor scrip. It is an order of courtesy and chivalry; its members the soldiers of justice, pledged to protect the weak, to help the needy, to defend the right. Now, all this service is by law and usage free. A barrister may not ask wages for his toil, like an attorney or a clerk, nor can he reclaim by any process of law, as the clerk and attorney can, the value of his time and speech. If he lives on the gifts of grateful clients, these gifts must be perfectly free. This theory of counsel's hire, though old as our language and our institutions, is, of course, a sham. No junior on the Oxford circuit dreams of succouring damsels from love of Dulcinea, or freeing galley-slaves from the obligations of knighthood. No guineas, no speech. The shifts by which lax attorneys are tickled into paying the fees which no law compels them to pay are droll as anything in the immortal laws of Barataria.

"Now, the rules which continue under Victoria to govern the bar, under James I. governed the bench. The Lord Chief Justice, or the Lord Chancellor, like the Secretary of State, is paid by fees. The king's judge is neither in deed nor in name a public servant; he receives a nominal sum as standing counsel for the Crown, and for the rest he depends on the income arising from his hearing of private causes. These facts appear in a comparison of the amounts paid by the Crown to its great legal functionaries, with the estimated profits of each particular post. Thus, the seals, though the Lord Chancellor had no proper salary, were in Egerton's time worth from ten to fifteen thousand pounds a-year. Bacon valued his place as Attorney-General at six thousand a-year; of which princely sum (twenty-five thousand a-year in coin of Victoria) the King only paid him eighty-one pounds six shillings and eightpence. Yelverton's place of Solicitor brought him three or four thousand a-year, of which he got seventy pounds from James. The judges had enough to buy their gloves and robes, not more. Coke, when Lord Chief Justice of England, drew from the State twelve farthings less than two hundred and twenty-five pounds a-year. When travelling circuit, he was allowed thirty-three pounds six shillings and eightpence for his expenses. Hobart, Chief Justice of the Common Pleas, had twelve farthings less than one hundred and ninety-five pounds a-year; Tanfield, Lord Chief Baron of his Majesty's Court of Exchequer, one hundred and eighty-eight pounds six shillings a-year. Yet each of these great lawyers had given up a lucrative practice at the bar. After their promotion to the bench, they lived in good houses, kept a princely state, gave dinners and masques, made presents to the King, accumulated goods and lands. Their wages were paid in fees by those who resorted for justice to their courts.

"These fees were not bribes. If the satirists, from Latimer to Nashe, described the bench of bishops and the bench of judges as taking bribes, it was only in the vein common to lampooners in every age of the world; the vein in which Boccaccio describes his friars, and Jonson his Justice Oberdos. Serious men made no complaint. Judicial corruption was not a grievance in 1604. In 1606 an attempt to reduce the fees in one department of chancery business was rejected by the popular party in the House of Commons.

"In the great list of grievances, drawn up in 1604, we find complaints that Cecil lives in adultery, that Parliament is packed with courtiers, that the forest laws have been revived, that pardons are sold to cut-throats and felons, that monopolies are granted to duns, and patents bestowed on extortioners and pimps; not that the great lawyers are thought corrupt or that justice is supposed to be bought and sold.

"Nor is such a grievance felt though undescribed. In the list of grievances there is one charge against the Lord Chancellor Egerton. Had there been a second, it would certainly have been named. In 1604, the charge which law reformers made against Egerton, was that he held the two offices of Master of the Rolls and Keeper of the Great Seals. It never occurred to these men to complain that he took his wages in the shape of fees.

. . . . . .

"The evidence produced against him, as Heneage Finch has told the House of Commons, proves his case and frees him from blame; of the twenty-two charges of corruption, three are debts —Compton's, Peacock's, and Vanlore's; two of these, Comp-

ton's and Vanlore's, debts on bond and interest. Any man who borrows money may be as justly charged with taking bribes. One case, that of the London companies, is an arbitration, not a suit in law. Even Cranfield, though bred in the city, cannot call their fee a bribe. Smithwick's gift, being found irregular, has been sent back. Thirteen cases—those of Young, Wroth, Hody, Barker, Monk, Trevor, Scott, Fisher, Lenthal, Dunch, Montagu, Ruswell, and the Frenchmen—are of daily practice in every court of law. They fall under Bacon's third list common fees, paid in the usual way, paid after judgment has been given. Kennedy's present of a cabinet for York House has never been accepted, the Chancellor hearing that the artisan who made it has not been paid. Reynell, an old neighbour and friend, gave him two hundred pounds towards furnishing York House, and sent him a ring on new year's day. Everybody gives rings, everybody takes rings, on a new year's day. The gift of five hundred pounds from Sir Ralph Hornsby was made after a judgment, though, as afterwards appeared, while a second, much inferior case, was still in hearing. The gift was openly made, not to the Chancellor, but to the officer of his court. The last case is that of Lady Wharton, the only one that presents an unusual feature. Lady Wharton, it seems, brought her presents to the Chancellor herself; yet even her gifts were openly made, in the presence of the proper officer and his clerk. Churchill admits being present in the room when Lady Wharton left her purse; Gardner, Keeling's clerk, asserts that he was present when she brought the two hundred pounds. Even Coke is staggered by proofs which prove so much, for who in his senses can suppose that the Lord Chancellor would have done an Act known to be illegal and immoral in the company of a registrar and a clerk? It is clear that a thing which Bacon did under the eyes of Gardner and Churchill must have been in his mind customary and right. It is no less clear that if Bacon had done wrong, knowing it to be wrong, he would never have braved exposure of his fraud by turning Churchill into the streets.

"Thus after the most rigorous and vindictive scrutiny into his official acts, and into the official acts of his servants, not a single fee or remembrance traced to the Chancellor can, by any fair construction, be called a bribe. Not one appears to have been given on a promise; not one appears to have been given in secret; not one is alleged to have corrupted justice."

But the character of the evidence was altogether an immaterial affair with the promoters of the prosecution. Hard pressed by malignant opponents who had already divided the spoils of victory, hopeless of meeting with justice by the notoriety of a public investigation, and doubtless influenced by the King's advice, Bacon made a qualified submission to angry foes and adverse circumstances. A confession of venal practice was never wrung from him. He would not even admit himself chargeable with corrupt intention. But responding one by one to the absurd accusations in terms that were nothing else but an incontrovertible argument for his innocence, he allowed that abuses had crept into the court over which he presided, and conceded that some of those abuses might be attributed to want of vigilance and method on his part. With this admission—not of guilt, but of defeat in a battle of the ante-chambers, he made a courtly bow to his unscrupulous antagonists, and requested that since they had gained their point they would, in decent regard of all chivalric sentiment, cease to molest him. What response this appeal to generosity met, is matter of history.

Societies and Institutions.

NEWCASTLE AND GATESHEAD LAW SOCIETY.

The committee of the Newcastle and Gateshead Law Society, at the 34th annual general meeting of the Society held on the 12th instant, presented the following report of their proceedings:—

As early as the month of February the attention of your committee was called by the Incorporated Law Society to the two Bills to amend the Attorneys and Solicitors Act, 1843. The one was brought into the House of Lords by the Incorporated Law Society; the other into the House of Commons by Mr. John Locke.

The latter was a measure of a limited character and contained some objectionable clauses. The former was a renewal, (with additions,) of the Bill introduced last year by the Incorporated Law Society who had framed the original Bill of 1843 and treated the subject in a comprehensive manner.

A petition from this society in favour of the measure of the Incorporated Law Society was sent for presentation to the House of Lords on the 5th March.

Many communications passed between the Incorporated Law Society and your committee during the progress of this Bill and also with the Leeds Law Society and between your president Mr. Clayton, and Mr. Keith Barnes, solicitor, of London.

In the month of April, letters were addressed to six of the local members of Parliament asking their support to the Bill of the Incorporated Law Society, which was passed at the latter end of August with a modification of some of the matter considered objectionable in Mr. Locke's Bill.

The other principal Bills affecting the profession were the Bankruptcy Consolidation Bill introduced by the Attorney General, that of Lord St. Leonard's "to further amend the Law of Property" and Lord Cranworth's "to give to trustees and others certain powers now commonly inserted in settlements, mortgages and wills;" also a Bill introduced by Lord Brougham "touching the transfer of real estate and the registration of the titles thereof."

These several legislative measures more or less had the attention of your committee. The Bill of Lord Brougham made no way in the House of Lords, and was soon abandoned; as to the Bankruptcy Bill, your committee was favoured with "remarks" by Mr. Ford, of the firm of Rogerson & Ford, and with "notes" and "further notes" by Mr. Lawrance, of the firm of Lawrance & Plews. After occupying attention for some time the Bill was withdrawn by Sir R. Bethell, but it is understood will be reintroduced during the ensuing Session.

Your committee will take the earliest opportunity of obtaining a print of the Bill as brought before the house when Parliament opens and proposes to call a general meeting of the Society with reference to a measure of such great importance.

The other two Bills of Lord St. Leonards' and Lord Cranworth's passed through both houses and became law.

During the progress of the above mentioned Bills your Committee received many important suggestions from the Metropolitan and Provincial Law Association as well as from the Incorporated Law Society.

Your committee have much pleasure in referring to the aggregate meeting of the Metropolitan and Provincial Law Association which was holden in Newcastle on the 9th and 10th October last.

The preparations for this meeting received the careful attention of your committee, who have much pleasure in recording the cordial co-operation this society received from the members of the profession at large in the town and neighbourhood in giving the Association which did Newcastle the honour of making it their place of meeting a cordial and friendly reception.

Your committee feel a pleasure in recording the meeting not merely as a passing event of the present year, but as being amongst the most valuable and important of the annals of the profession.

Your committee during the events of the year have to lament the death of Mr. James Arnott, and more recently that of Mr. Matthew Forster, who was long a member of this society and had been for many years the father of the profession of Newcastle.

Your committee have been much impressed with the importance of various observations made at the late meeting of the Metropolitan and Provincial Law Association suggestive of the greater unity and approximation of the profession as a general incorporation under an extension of the charter of the Incorporated Law Society, and would take the liberty of suggesting the appointment of a special committee of this society to give this question a careful and deliberate consideration.

Your committee beg to report that the society at present numbers 79 members.

Law Amendment Society.

SUGGESTIONS FOR IMPROVEMENTS IN OUR SYSTEM OF LEGISLATION BY PRIVATE BILLS.

The following paper was read by Mr. PULLING, at a meeting of this society on the 3rd instant.

The phrase—*system of legislation*—in reference to private Bills has, at this day, a received meaning, though it is not altogether appropriate.

The practice of exceptional interference with the general course of the law, by private and special enactments, concessions, and dispensations, rather implies a series of anomalies than *legislation*, and certainly represents no *system* of legislation.

To interfere with the course of the general law, in favour or to the prejudice of individuals, is neither legislation nor judicial administration; it is hardly more or less than the arbitrary dispensation of absolute power.

Under purely despotic governments, whatever receives the sanction of the sovereign becomes legal; and in our own country, under the sway of the Plantagenets, the impress of the great seal or the sanction of the sign manual warped the law to the occasion of every favoured applicant. Letters from the Crown, abundantly to be found on the *Patent and Close Rolls*, assumed to give a ready relief against legal obstructions in the way of private schemes.

Living now under a constitutional government, which admits of no *royal* grants, concessions, or dispensations, infringing on the general law of the land, we are made to feel that the general law *can* be adapted to the exigencies of any individuals who pursue the forms prescribed, and have the money required, for obtaining a *private Act of Parliament*.

Private Acts in the present age, if they do not, like the early documents under that title to be found on the *Rolls* of the compliant Parliaments of Edward IV. and Richard III., bastardize a troublesome competitor for the Crown, or *partition* the possessions of those out of power among the adherents and friends of the ruling body, still work the injustice that is inevitable wherever general laws are made to yield to individual importunities.

If it be the lot of one of us to be involved in a dispute with a company invested with parliamentary powers, we may soon be made to feel that, not the general law of England, but a special statute passed on the private petition of our adversary, is to adjust the differences between us. Even if carefully endeavouring to avoid direct negotiations and transactions with bodies thus armed, we have little chance of ignoring or disregarding the provisions of private Acts of Parliament. We cannot travel or stay at home without bringing ourselves within the operation of some of the special enactments. Every railway, canal, or turnpike-road; every harbour, dock, or pier; almost every town, or large parish, has its collection of local acts. If the street in front of our doors is obstructed; if the supply of water or gas to our houses be capriciously stopped; if the rate collector summarily calls on us for any unexpected contribution, we may rely on finding the imposition sanctioned, not by the general law, but by some extraordinary enactment of the Legislature, passed on a private petition.

The volumes of our Statute Law at this time contain no less than *twenty-seven thousand* local, personal, and private Acts of Parliament, varying the general public law, and containing enactments having almost every variety of object—compulsorily to dispossess the owners of private property, under the pretence of the public good—freely to give certain joint stock companies the management and control of our rivers, harbours, roads, and streets, and other property, essentially public—to confer monopolies and arbitrary powers, tolls and taxes, wholly unknown to the common law.

These special acts introduce an endless variety of conditions and terms into all contracts and transactions with the privileged bodies; penalties and penal proceedings—often of a very vexatious character—innovating on the first principles of the common law, the law of evidence, the rights of property and of civil liberty—mere private trespasses on the privileged property visited with serious punishments—in some instances the offences magnified into *felonies*.

Opposed as such anomalous enactments are to every principle of justice, hardly less objectionable is the way in which they pass the parliamentary ordeal. Framed wholly to meet the purposes of the promoters, a local and personal Bill comes before a select committee in either House, rarely opposed by any one but a rival applicant for similar privileges. The contest in committee is carried on between these rivals week after week, during the Parliamentary Session. Lawyers, engineers, and witnesses—on some occasions there have been as many as four hundred concerned in one Bill (all of them extravagantly paid for their services)—come only to promote the special interests of those for whom they severally appear. No one, professionally or otherwise, is engaged to watch or advocate the interests of the public: and the wearied members of committee, overwhelmed with a thousand sophistries and misrepresentations, are too glad to see the prospect of terminating the contests which actually arise, without volunteering inquiries affecting merely the public interests. Select committees have been over and over again denounced as the very worst tribunals that could be devised for the investigation of the merits of a private bill project. The prodigal costliness of the proceedings before these committees, often amounting, in the case of our railway companies, to a very large proportion of all their capital—and, in the case of many local improvement bills, to enormous sums, directed to be raised afterwards by tolls and impositions on the public—have made one evil of private bill legislation press where it is sure to make itself felt.

Shareholders who contributed funds thus misapplied and perverted from their legitimate purpose—the public who have been taxed in various ways to meet the deficiency, all feel that Select Committee expenses are a gross abuse. When we find the expenditure of the Great Northen Railway in parliamentary costs amounting to *half a million sterling* before the undertaking itself was even commenced—when we find (as parliamentary reports show us) companies consuming their entire property and proposed capital in obtaining, or endeavouring to obtain, the concession of *parliamentary powers* — the practice which sanctions and necessitates such breaches of trust, might be justly stigmatized as something more than a *mere abuse*.

Last, though not the least, of the evils of private Bill proceedings, is the obstruction they offer to the legitimate business of Parliament. In the great railway session of 1846, there were no less than five hundred sittings of select committees, as many as thirty-four being held in one day. When session after session, amidst the loud complaints of wearied members and of disappointed constituents, private bill committees consume that time which, judiciously applied to the details of public business, might prevent the repetition of the annual outcry about reforms postponed, inquiries refused, the estimates scrambled through, and great public questions neglected—we may justly denounce the private bill system as directly obstructing the business of the nation. Were the labours of private bill committees to be lessened, and the valuable time thus consumed to be devoted to committees to be appointed for the thorough investigation of the details, and expediting the progress of *public* questions before Parliament, the annual disappointment referred to would indeed be lessened.

The unjustifiable costliness, the anomalous character, the inconvenient and irksome proceedings of private bill committees, obstructive as they are to public business, and so wholly unsatisfactory in their results, have been the subject of vehement condemnation by all classes, for a great many years—by parliamentary committees without number—by judges who have vainly endeavoured to construe and practically apply the exceptional enactments—and by the public, who have to suffer and pay for it all.

The anomalous authority exercised by Parliament in the case of private bills has ever been deemed to require the utmost vigilance. The preliminary investigation by the ancient officers called *Receivers and Triers of Petitions* and the subsequent examination by the Judges summoned in the House of Lords having gone into disuse, standing orders have been made in modern times, with the view to realise the eulogistic apology of Blackstone (vol. iii, p. 345), that "private Acts of Parliament are carried on in both Houses with great deliberation and caution, and that nothing is done without the consent of all parties in being and capable of consent, that *have the remotest interest in the matter*."

As the practice of parliamentary interference by private bills has gradually extended from mere cases of disentailing private estates with the consent of every individual concerned, to extensive joint stock undertakings of a distinctly public character, at the prayer only of the schemers, it has, after years of experimental change, been found that no standing orders are sufficient to prevent imposition and injustice. The inherent defects of a system by which the distinct functions of the legislator and judge are sought to be united, defy all human efforts to cure it.

In 1846 the abuses practised before private bill committees excited so much attention, that Parliament was induced to pass an Act, 9 & 10 Vict. c. 106, affirming the self-evident proposition, that "it is expedient that facilities should be given for procuring more complete and trustworthy information previous to inquiries before either House of Parliament on applications in certain cases for private Acts." But the complete and trustworthy information which was directed by that Act, and the amending Act of 1848 (11 & 12 Vict. c. 129), was practically limited to certain matters affecting the special interests confided to the *Commissioners of Woods and Forests, and the Admiralty*, and these preliminary inquiries were not required to be made in such a manner as to afford Parliament or the public any light on the real merits of a proposed scheme: which might, for anything that appeared in such preliminary investigation, be most prejudicial to private rights, without producing any commensurate public advantage. These preliminary inquiries, as might be expected, were there-

fore after a short time pronounced *a failure*, and the statutes prescribing them repealed (by 14 & 15 Vict. c. 129).

With some alterations in detail in the routine of select committees, the regulations affecting private bills remain almost as they were. The chief objections to them continue, and with, perhaps, the exception of parliamentary agents and practitioners, every class affected by private bills and private Acts of Parliament unite in denouncing them as a *monstrous inconvenience* and a *monstrous abuse*.

The instituting a preliminary investigation of *the facts*, which is a principle of our whole system of justice, which the common law requires before judgment can be pronounced, which is followed in every tribunal in this country, either in the shape of a trial by jury or reference to some subordinate officer, or to some competent person specially appointed to reduce the facts into the shape of a special case, is practically ignored by Parliament, who proceed to the second stage of a private bill, *without any investigation* of the merits, and then, in the objectionable manner already spoken of, *delegate the investigation and the real power of ultimate decision* to a few members of their own body.

Anticipating, from a notice of motion already given for next session, that Parliament will, before long, again take into consideration the whole question of private bill procedure, it may be worthy the attention of this Society whether the following suggestions might not, with some advantage, be submitted to the attention of the Legislature:—

1. Let competent persons be appointed by both Houses of Parliament, invested with the full powers of the ancient *triers* and *receivers of petitions*, and the modern *examiners;* and let every petition for a private bill be referred to one of such persons, who, having summoned before him, and fully heard all parties interested, and fully examined all material evidence, parol or documentary, should make a full and complete report to Parliament not only of the compliance with the standing orders, but of the objects and proved facts relating to each petition, and the evidence, conflicting or otherwise, by which it is promoted or opposed, and the precise way in which the proposed Bill deviates, in any clause, from the general law of the land.

2. Let no petition for a private bill be presented to either House without such report, accompanied with copies of all maps, plans, and documents referred to therein.

3. Let the attention of Parliament, in committee or otherwise, be confined to the disposal of *the questions arising on the report*, and any exceptions to such report duly presented by any party having a recognised *locus standi;* and let the facts shown on such report, or any report on any fresh investigation, directed in consequence of such exceptions, be conclusive.

4. Let general regulations be made for petitions for such private bills being presented at any period of the year, and being referred at once to the appointed examiner by the Lord Chancellor or Speaker—for the purpose of such examination, altogether or in part, in the immediate locality to be affected by the proposed bill—and for visiting with exemplary costs all persons guilty of vexatious proceedings.

5. Let all *common form* clauses, of every class of local and personal Act, be consolidated into one or more general Acts, and made to operate in all cases of a similar character, both as regards existing and future local and personal Acts, whether such clauses regulate the mode of procedure, the form of conveyance, &c.; and

6. Let Parliament, as speedily as possible, pursue the course taken with respect to local courts, the enclosure of waste lands, watching, lighting, police, and various other matters formerly regulated by *special* Acts, and substitute general and systematic legislation for that which is now merely anomalous and pernicious.

These amendments in the mode of proceeding with respect to applications for private Acts of Parliament, would not only materially diminish the present expenditure of public and private time and money before committees, and secure to Parliament complete and trustworthy information respecting each application, but the reform could, unlike any change hitherto suggested, be effected without in any way intrenching on the legitimate function or privileges of either House of Parliament.

In lieu of the loose and unsatisfactory investigation under the present mode of proceeding, an authentic record of the facts of every case would come before Parliament, enabling each branch of the Legislature to decide on those proved facts, and apply the redress which the constitution has empowered Parliament to afford.

Lord Stanley, M.P., Mr. Craufurd, M.P., and Mr. Ewart, M.P., were present, and took part in the discussion.

Births, Marriages, and Deaths.

BIRTHS.

LAWSON—On Dec. 24, the wife of William Norton Lawson, Esq., Barrister-at-Law, of a daughter.

NORTON—On Dec. 27, at 15, Clifton-place, Camberwell New Road, the wife of Mr. Francis Norton, Solicitor, of a daughter.

MARRIAGES.

BRADY—HATCHELL—On Dec. 15, the Right Hon. Maziere Brady, Lord Chancellor of Ireland, to Mary, second daughter of the Right Hon. John Hatchell, Fortfield-house, county Dublin.

SHAKESPEARE—HARTILL—On Dec. 20, William Shakespeare, Esq., of Oldbury, Solicitor, to Annie, second daughter of the late Mr. Joseph Hartill, of the same place.

DEATHS.

CURRIE—On Dec. 23, at Hill Side, Abbot's Langley, Hertfordshire, James Currie, Esq., of that place, and No. 32, Lincoln's-inn-fields, aged 63.

NICKOLS—On July 7, at Maryborough, aged 38, Maria, wife of Mr. W. Edward Nickols, County Court and Court of Mines officer, Raglan, Victoria, Australia, late of Leeds.

English Funds and Railway Stock

(Last Official Quotation during the week ending Friday evening.)

	English Funds.			Railways—*Continued.*	
			Shrs.		
	Bank Stock	..	Stock	Ditto A. Stock	106
	3 per Cent. Red. Ann..	92⅜	Stock	Ditto B. Stock	134
	3 per Cent. Cons. Ann.	..	Stock	Great Western	74⅜
	New 3 per Cent. Ann..	92⅛	Stock	Lancash. & Yorkshire	120
	New 2½ per Cent. Ann.	..	Stock	London and Blackwall.	64
	Consols for account ..	92⅛	Stock	Lon. Brighton & S. Coast	119
	India Debentures, 1858.	..	25	Lon. Chatham & Dover	51⅛
	Ditto 1859.	..	Stock	London and N.-Wstrn..	102½
	India Stock	..	Stock	London & S.-Westrn.	96
	India 5 per Cent. 1859..	..	Stock	Man. Sheff. & Lincoln..	56⅜
	India Bonds (£1000) ..	..	Stock	Midland	136½
	Do. (under £1000).....	9 dis.	Stock	Ditto Birm. & Derby	110
	Exch. Bills (£1000)...	par.	Stock	Norfolk.....	57
	Ditto (£500)....	..	Stock	North British	65⅜
	Ditto (Small) ..	..	Stock	North-Eastn. (Brwck.)	105½
			Stock	Ditto Leeds	65
	Railway Stock.		Stock	Ditto York	95½
			Stock	North London.....	102
Shrs.			Stock	Oxford, Worcester, & Wolverhampton ..	..
Stock	Birk. Lan. & Ch. Junc.	83			
Stock	Bristol and Exeter....	101	Stock	Shropshire Union	52
Stock	Cornwall	6⅛	Stock	South Devon	42½
Stock	East Anglian	17½	Stock	South-Eastern	88⅝
Stock	Eastern Counties	54⅛	Stock	South Wales	54
Stock	Eastern Union A. Stock	39	Stock	S. Yorkshire & R. Dun	80
Stock	Ditto B. Stock	28	25	Stockton & Darlington	43½
Stock	Great Northern	11	Stock	Vale of Neath	70

London Gazettes.

Professional Partnership Dissolved.

TUESDAY, Dec. 25, 1860.

WALTER, ALFRED, and SAMUEL BALDEN, Jun., Attorneys and Solicitors, 48, Cherry-street, Birmingham (Walter and Balden), by mutual consent. Dec. 19.

Windings-up of Joint Stock Companies.

LIMITED IN BANKRUPTCY.

TUESDAY, Dec. 25, 1860.

LIVERPOOL TRADESMAN'S LOAN COMPANY (LIMITED).—Petition to wind-up presented Dec. 22, will be heard before Commissioner Perry, at Liverpool, on Dec 31, at 12.

FRIDAY, Dec. 28, 1860.

UNLIMITED IN CHANCERY.

MERCANTILE GUARANTEE AND ASSURANCE COMPANY. V.C. Wood will proceed on Jan. 9, at 1, to settle the list of contributories of this company.

LIMITED IN BANKRUPTCY.

AUSTRALASIAN LAND AND EMIGRATION COMPANY (LIMITED). Creditors to prove their debts before Commissioner Goulburn on Jan. 9, at 12.

Creditors under 22 & 23 Vict. cap. 35.

Last Day of Claim.

TUESDAY, Dec. 25, 1860.

BARNES, WILLIAM, Wine Merchant, Foregate-street, Worcester. Huxley, Solicitor, Worcester. Feb. 10.

COTTLE, ROBERT, Printer, Bookseller, & Stationer, Basingstoke, Southampton. Lamb, Brooks, & Challis, Solicitors, Basingstoke. Feb. 20.

ILLINGWORTH, THOMAS, Farmer, formerly of Methley, Yorkshire, but late of Charlton Field, Rothwell, Yorkshire. Lumb & Sons, Solicitors, Wakefield. Jan. 28.

SPENCER, JOSIAH, Merchant, Bengal-place, New Kent-road, Surrey. Wates, Solicitor, 15, Harmer-street, Gravesend, Kent. Jan. 31.

TOSSWILL, ROBERT, Esq., Victoria-road, Clapham-common, Surrey. McLeod, Stenning, & Watney, Solicitors, 16, London-street, Fenchurch-street. Jan. 31.

WOOD, JONATHAN, Gent., Hadleigh, Essex. Woodard, Solicitor, 106, Fenchurch-street, London. March 28.

FRIDAY, Dec. 28, 1860.

CROSSBY, THOMAS, Farmer, Coleby, Lincolnshire. Moore, Solicitor, Lincoln. March 25.

DAVIS, JOHN, Merchant, Houndsditch, London, and 47, Porchester-terrace, Bayswater, Middlesex. Sampson, Samuel, & Emanuel, Solicitors, 31, New Broad-street, London. Jan. 30.

MAWBY, NATHAN, Grocer & Draper, Great Bently, Essex. R. & J. Mawby, Executors, 24, Old Jewry, London. Feb. 1.

PLATT, Mr. JOSEPH, Croft-street, Hyde, Chester. Drinkwater, Solicitor, Hyde. Feb. 1.

SLADEN, JOHN BAKER, Esq., Ripple-court, Kent. Sladen, Solicitor, 14, Parliament-street, Westminster. Feb. 1.

WINCUP, GEORGE, Farmer, Earl Soham, Suffolk. Clubbe, Solicitor, Framlingham, Suffolk. Feb. 1.

Creditors under Estates in Chancery.

Last Day of Proof.

TUESDAY, Dec. 25, 1860.

BARNES, THOMAS, Esq., Sawbridgeworth, Hertfordshire. Wollen *v.* Temple, V.C. Stuart. Feb. 2.

BRISTO, THOMAS, Gent., Ipswich, Suffolk. Bristo *v.* Ashford, V.C. Wood. Jan. 17.

CALDWELL, JAMES STAMFORD, Esq., Linley Wood, Audley, Staffordshire. Caldwell *v.* Caldwell, V.C. Wood. Jan. 20.

GREGORY, ELIZABETH, Spinster, Woodville, Forest Hill, Surrey. Milburn *v.* Gregory, V.C. Wood. Jan. 7.

GREGORY, RICHARD, Ship & Insurance Broker, 3, Ingram-court, Fenchurch-street, London, and of Woodville, Forest Hill, Surrey. Milburn *v.* Gregory, V.C. Wood. Jan. 7.

LAWTON, EDWARD, Canklow Wood Farm, near Rotherham, Yorkshire. Lawton *v.* Lawton, M.R. Jan. 18.

LOCKYER, ISABELLA LANCASTER, Widow, 4, Kimbolton-place, Brompton, Middlesex. Hogg *v.* Reid, V.C. Stuart. Jan. 28.

READ, ROBERT, Farmer, Norton Subcourse, Norfolk. Read *v.* Read, M.R. Jan. 22.

SIMES, WILLIAM, Carpenter, Ellis-street, Chelsea, Middlesex. Marquet *v.* Simes, V.C. Stuart. Jan. 22.

SIMPSON, JOHN, Jun., Gresley, Derbyshire. Pass *v.* Simpson, V.C. Wood, Jan. 20.

WATERS, WILLIAM WATERS, Flour Factor, Holland-street, Blackfriars, Surrey, and Thurloe-square, Brompton, Middlesex. Waters *v.* Savio, V.C. Stuart. Feb. 4.

FRIDAY, Dec. 28, 1860.

HATCHETT, JOHN, Farmer, West Drayton, Middlesex. Hatchett *v.* Watmore, V.C. Stuart. Jan. 10.

NOAKS, JOHN, Brewer, Cheam, Surrey. Noaks *v.* Hodges, V.C. Stuart. Feb. 4.

PHILLIPS, GEORGE, Farmer & Tile Manufacturer, Lowick, Northumberland. Phillips *v.* Phillips, V.C. Wood. Jan. 23.

WOOD, JOHN, Merchant, Kingston-upon-Hull, and of Beverley, Yorkshire. Wood *v.* Farthing, M.R. Jan. 22.

Assignments for Benefit of Creditors.

TUESDAY, Dec. 25, 1860.

FERGUSON, JAMES, Draper, Stonehouse, Devonshire. Dec. 18. *Sol.* Fowler, Courtenay-street, Plymouth.

FISHER, JAMES, Boot & Shoe Manufacturer, Nottingham. Nov. 28. *Sols.* Cowley & Everall, Nottingham.

HENDERSON, JOHN, Bookseller & Stationer, New-street, Birmingham. Dec. 21. *Sol.* Boyer, 14, Old Jewry Chambers, London.

HINDSON, THOMAS, Farmer, Brougham Rectory, Westmorland. Dec. 13. *Sol.* Arnison, Penrith.

KING, SAMUEL, Linen Draper, Reading, Berks. Nov. 30. *Sol.* Mardon, Christchurch-chambers, 99, Newgate-street, London.

LINSELL, WILLIAM, Shopkeeper, Stebbing, Essex. Nov. 29. *Sols.* Craig & Rankin, Braintree, Essex.

LISTER, JOHN, Carpenter, Sheffield. Dec. 4. *Sols.* Branson and Sons, Sheffield.

MACNAMARA, JOHN ROBINSON, & ELIZA MACNAMARA, Shopkeepers, Cork. Dec. 8. *Sol.* Davidson, Bradbury, & Hardwick, Weaver's-hall, 22, Basinghall-street, London.

NEWMAN, PHILIP ROBERT, Hosier, North-street and East-street, Brighton, Sussex. Dec. 12. *Sol.* Taylor, 19, Old Burlington-street.

WOODS, JEREMIAH EDWARD, Hosier & Glover, Liverpool. Dec. 8. *Sols.* Davidson, Bradbury, & Hardwick, Weaver's-hall, 22, Basinghall-street, London.

FRIDAY, Dec. 28, 1860.

BISHOP, THOMAS, Licensed Victualler & Tailor, Kidderminster, Worcestershire. Dec. 7. *Sol.* Rea, 34, Foregate-street, Worcester.

LE CHEMINANT, THOMAS, Licensed Victualler, Rainbow Public House, 3, Queen-street, Ratcliff, Middlesex. Nov. 22. *Sol.* Rushbury, 32, Coleman-street, London.

LEWIS, WILLIAM, Railway Work Contractor, Bath-road, Worcester, Dec. 10. *Sol.* Rea, 34, Foregate-street, Worcester.

REDFERN, JABEZ, Draper, Ashton-under-Lyne, Lancashire. Dec. 3. *Sols.* Sale, Worthington, Shipman, & Seddon, Booth-street, Manchester.

STEAR, JOHN, Boot & Shoe Maker, Belper, Derbyshire. Dec. 7. *Sol.* Borough, Derby.

Bankrupts.

TUESDAY, Dec. 25, 1860.

AGATE, JOSEPH, Grocer, Tallow Chandler & Baker, Emsworth, Hants. *Com.* Holroyd: Jan. 8, at 3; and Feb. 12, at 2.30; Basinghall-street. *Off. Ass.* Edwards. *Sols.* Watson & Son, 19, Bouverie-street, Fleet-street, London; or Way, Portsea, Hants. *Pet.* Dec. 21.

AYLES, PETER WESTON, late Shipwright & Ship Builder, now a Builder, Weymouth, Dorsetshire. *Com.* Andrews: Jan. 4 and 31, at 12; Exeter. *Off. Ass.* Hirtzel. *Sols.* Tizard, Weymouth; or Turner & Hirtzel, Exeter. *Pet.* Dec. 22.

BEARD, ROBERT, Wheelwright, Snow's-fields, Bermondsey, Surrey. *Com.* Fonblanque: Jan. 9, at 2; and Feb. 6, at 12; Basinghall-street. *Off. Ass.* Stansfeld. *Sols.* J. & W. Butler, 191, Tooley-street, London. *Pet.* Dec. 22.

BESLEY, GEORGE, Innkeeper, Highbridge, Somersetshire. *Com.* Hill: Jan. 7, and Feb. 4, at 11; Bristol. *Off. Ass.* Miller. *Sols.* King & Plummer, Bristol. *Pet.* Dec. 15.

BOUND, JOHN, Draper, Hay, Breconshire. *Com.* Hill: Jan. 15, and Feb. 12, at 11; Bristol. *Off. Ass.* Acraman. *Sols.* Cheese, Hay, Brecon; or Brittan & Sons, Albion-chambers, Bristol. *Pet.* Dec. 22.

DEMPSEY, JOHN, Grocer & Flour Dealer, Hooley Hill, Audenshaw, Lancashire. *Com.* Jemmett, Jan. 10 and 31, at 12; Manchester. *Off. Ass.* Pott. *Sol.* Beddish, 52, Princess-street, Manchester. *Pet.* Dec. 20.

DODGE, NATHANIEL SHATTSWELL, & RAFFAELLO LOUIS GIANDONATI, Dealers in India Rubber Goods, & Warehousemen, 44, St. Paul's-churchyard, London. *Com.* Evans: Jan. 8, at 1.30; and Feb. 7, at 2; Basinghall-street. *Off. Ass.* Johnson. *Sols.* Atkinson, Pilgrim, & Phillips, Church-court, Lothbury. *Pet.* Dec. 22.

GRIFFITH, JOHN, Bookseller & Stationer, 21, Hanway-street, Oxford-street, Middlesex. *Com.* Fane: Jan. 4, at 2; and Feb. 8, at 1; Basinghall-street. *Off. Ass.* Whitmore. *Sols.* Lawrance, Piews, & Boyer, 14, Old Jewry-chambers, Old Jewry, *Pet.* Dec. 22.

HATFIELD, JOHN, Milliner & Dress Maker, formerly of 15, South Molton-street, Oxford-street, Middlesex, but now of 56, Connaught-terrace, Hyde-park. *Com.* Holroyd: Jan. 8, at 3; and Feb. 12, at 2.30; Basinghall-street. *Off. Ass.* Edwards. *Sol.* Chapple, 19, Gt. Carter-lane, London. *Pet.* Dec. 21.

HOLLIN, DAVID, Boot & Shoe Manufacturer, Leicester. *Com.* Sandars: Jan. 10 and 31, at 11; Nottingham. *Off. Ass.* Harris. *Sol.* Hart, Leicester. *Pet.* Dec. 20.

WEST, CHARLES, Baker, Brasted, Kent. *Com.* Evans: Jan. 8, at 11; and Feb. 7, at 1; Basinghall-street. *Off. Ass.* Bell. *Sols.* Matthews, Son, & Stoton, 2, Arthur-street, West, London-bridge. *Pet.* Dec. 22.

WOOD, MATTHIAS, Plumber, Glazier, & Blue Slater, Barnsley, Yorkshire. *Com.* Ayrton: Jan. 14, and Feb. 4, at 11; Leeds. *Off. Ass.* Hope. *Sols.* Carliss & Cudworth, Leeds; or Barratt, Wakefield. *Pet.* Dec. 22.

FRIDAY, Dec. 28, 1860.

COX, WILLIAM, Grocer & Provision Dealer, 77, Dale End, Birmingham. *Com.* Sanders: Jan. 10 & Feb. 7, at 11; Birmingham. *Off. Ass.* Wilmore. *Sol.* Marshall, Birmingham. *Pet.* Dec. 27.

FENNELL, WILLIAM TUGWELL, Hatter, Poole Valley, Brighton. *Com.* Fonblanque: Jan. 9, at 2.30, & Feb. 8, at 12; Basinghall-street. *Off. Ass.* Graham. *Sols.* Linklaters & Hackwood, 7, Walbrook, London, and Brighton. *Pet.* Dec. 26.

HARRIS, ISABELLA LILIAS MARY, Widow, Hosier, Liverpool. *Com.* Perry: Jan. 7 & 28, at 11; Liverpool. *Off. Ass.* Morgan. *Sols.* Lowndes, Bateson, Lowndes, & Robinson, Brunswick-street, Liverpool. *Pet.* Dec. 24.

HAYES, MARK, Cheesemonger, New Brentford, Middlesex. *Com.* Goulburn: Jan. 9, at 1.30, & Feb. 10, at 11; Basinghall-street. *Off. Ass.* Pennell. *Sols.* J. & J. H. Linklater & Hackwood, 7, Walbrook, London. *Pet.* Dec. 22.

MILLER, NOAH, Builder, Sidmouth, Devon. *Com.* Andrews: Jan. 16, & Feb. 13, at 12; Exeter. *Off. Ass.* Hirtzel. *Sol.* Clark, Exeter. *Pet.* Dec. 19.

PALMER, JOHN, Picture Dealer, Mutley House, Mutley, near Plymouth, Devon. *Com.* Evans: Jan. 10, at 2, & Feb. 8, at 11; Basinghall-street. *Off. Ass.* Bell. *Sols.* Wilde, Rees, Humphrey, & Wilde, 21, College-hill, City. *Pet.* Dec. 17.

WATSON, HENRY, Miller & Baker, Longford, Derbyshire. *Com.* Sanders: Jan. 10, & 31, at 11; Nottingham. *Off. Ass.* Harris. *Sol.* Tomlinson, Ashbourne. *Pet.* Dec. 27.

BANKRUPTCIES ANNULLED.

TUESDAY, Dec. 25, 1860.

BOWMAN, EDWARD BARONS, Apothecary, Archerfield House, Highbury New Park, Islington, and of 1, Alma-villas, Dalston, Middlesex. Dec. 21.

BURGESS, WILLIAM, Dealer in Candles & Soap, formerly of 100, Cambridge-street, Pimlico, Middlesex. Dec. 21.

JOHNSON, JOHN, RICHARD CLARKSON, & FREDERICK FURNESS, Tailors & Woollen Drapers, Ashton-under-Lyne (Johnson, Clarkson, and Co.). Dec. 20.

THOMAS, WILLIAM, Publican, Salutation Inn, Cardiff, Glamorganshire. Dec. 21.

FRIDAY, Dec. 28, 1860.

ANDREWS, RICHARD, Stationer & Rag Merchant, late of Fareham, Hants, and now of the Lord Nelson, Morning-lane, Homerton, Middlesex, Beer Retailer. Dec. 27.

MEETINGS FOR PROOF OF DEBTS.

TUESDAY, Dec. 25, 1860.

ARNSBY, GEORGE EKINS, Boot & Shoe Manufacturer, Earls Barton, Northamptonshire. Jan. 16, at 12; Basinghall-street.—HILLS, JONATHAN, & ROBERT HILLS, Bankers, High-street, Gravesend, and High-street, Dartford, Kent. Jan. 15, at 12.30; Basinghall-street, joint estate. Same time sep. est. of Jonathan Hills. Sep. est. of Robert Hills.—MILLER, JOHN, Pawnbroker, Nottingham. Jan. 17, at 11; Nottingham. MOULTON, GEORGE CANNING, Dealer in India Rubber & other Goods, 4, Gresham-street, London, late of 24, Brunswick-square, Bloomsbury, Middlesex. Jan. 16, at 12.30; Basinghall-street.—PEARSON, WILLIAM, Market Gardener, East Bergholt, Suffolk. Jan. 18, at 11.30; Basinghall-street.—RITCHIE, GEORGE, Grocer, Newcastle-upon-Tyne. Jan. 8, at 11; Newcastle-upon-Tyne.—SCHEMBRI, GIUSEPPE LUIGI, Merchant, 150, Leadenhall-street, London. Jan. 18, at 11; Basinghall-street.—SKEVINGTON, EDWARD, & JAMES JOHN CLUTTERBUCK, Leather Dressers, 15 & 16, Russell-street, Bermondsey, Surrey. Jan. 15, at 1; Basinghall-street.—SPIKINS, CHARLES, Bottled Beer Merchants, 9, Duke-street, Portland-place, Middlesex. Jan. 18, at 11; Basinghall-street.—TIGER, WILLIAM, Warehouseman, late of 194, Tottenham-court-road, Middlesex, and Richmond, Surrey, and Portland-terrace, Notting-hill, Middlesex, Baker. Jan. 18, at 12.30; Basinghall-street.—VOKINS, JOHN, and WILLIAM HURD, Horticultural Builders, Jubilee-place, Chelsea, Middlesex. Jan. 18, at 12; Basinghall-street.—WARREN, MARK, Haberdasher, 69, Shoreditch, Middlesex. Jan. 18, at 11; Basinghall-street.—WILKINSON, GEORGE, Grocer & Flour Dealer, Durham. Jan. 15, at 12.30; Newcastle-upon-Tyne.

FRIDAY, Dec. 28, 1860.

HORNER, THOMAS, House Decorator, 15, Hart-street, Bloomsbury, Middlesex. Jan. 21, at 11.30; Basinghall-street.—KEYTE, HENRY, Silk Manufacturer, 4, Church-court, Old Jewry, London. Jan. 21, at 1; Basinghall-street.—LEWIS, EDWARD, Lithographer, Printer, & Engraver, 18, Coleman-street, London (Edward Lewis & Co) Jan. 9, at 11.30; Basinghall-street.—MABSON, HENRY, Butcher, Ecclesfield, Yorkshire. Jan. 19, at 10; Sheffield.—MANNING, THOMAS, Head Keeper, Aldershott, Hants. Jan. 18, at 1; Basinghall-street.—REDPATH, LEOPOLD, Dealer in Shares, 27, Chester-terrace, Regent's-park, and of the Great Northern Railway Company's Offices, King's Cross, Middlesex Jan. 21, 1861, at 11; Basinghall-street.—SHAW, WILLIAM, jun., Underwriter, 11, New Broad-street, London. Jan. 18, at 11, Basinghall-street.—SKINNER, JOHN, Boot & Shoe Manufacturer, Northampton. Jan. 17, at 11.30; Basinghall-street.—SMITH, WILLIAM, & WILLIAM FRANCIS PATIENT, Tanners & Leather Merchants, Bermondsey New-road, Surrey (Smith, Patient, & Smith). Jan. 18, at 11; Basinghall-street.—STACEY, MARSHALL THOMAS, Dealer in Tea & Tobacco, Leeds. Jan. 18, at 11; Leeds.—WILSON, WILLIAM, Currier & Leather Cutter, Thirsk and Northallerton, Yorkshire. Jan. 18, at 11; Leeds.